NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 514

RIN 3141–AA18

Annual Fees Payable by Indian Gaming Operations

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is amending its fee regulations to add class III gaming revenues to the assessable gross revenue base, increase the total amount of fees that can be imposed, and provide for an exemption for self-regulated tribes such as the Mississippi Band of Choctaw. This action is being taken pursuant to recent amendments to the Indian Gaming Regulatory Act. The primary effect of this action is to increase the funding for the National Indian Gaming Commission. This rule provides direction and guidance to Indian gaming operations (activities) to enable them to compute and pay the annual fees as authorized by the Indian Gaming Regulatory Act (IGRA) as amended. The computation and payment of annual fees are to be self-administered by each gaming operation that is subject to the jurisdiction of the Commission.

The proposed rule was published in the **Federal Register** on December 16, 1997. The 30-day comment period ended on January 15, 1998.

DATES: Effective April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is charged with, among other things, regulating gaming on Indian lands. These amendments to the fee regulations are issued pursuant to the IGRA, as amended.

Purpose

The purpose of the fee regulations is to implement those portions of the IGRA that provide for the payment of fees by gaming operations and for the collection and use of such fees by the Commission. Gaming operations are the economic entities licensed by a tribe that operate the games, receive the revenues, issue the prizes, and pay the expenses. Gaming operations may be operated by a tribe directly, by a management contractor, or under certain conditions, by another person or other entity.

These regulations are being amended to:

(1) Add class III gaming revenues to the assessable gross revenue base,

(2) Increase the total amount of fees that can be imposed,

(3) Eliminate the requirement that a minimum fee be assessed on tier 1 revenues, and

(4) Provide an exemption for self-regulated tribes such as the Mississippi Band of Choctaw.

As a result, gaming operations offering only class II games must continue reporting and paying fees, 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.

Starting Date

This rule will become effective for calendar year 1998 which means that all gaming operations within the jurisdiction of the Commission must self-administer the provisions of these amended regulations and must report and pay any fees that are due to the Commission for the first quarter of 1998 by the end of the first quarter of 1998 (March 31), or no later than April 13, 1998, the date these regulations become effective.

System Self-Administered

These regulations provide for a system of fee assessment and payment that is self-administered by the gaming operations. Briefly, the Commission adopts and communicates the assessment rates; the faming operations apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission quarterly.

Fees Based on Assessable Gross Revenues

Annual fees are payable quarterly each calendar year based on the previous calendar year's assessable gross revenues from the gaming operations. For this purpose, all revenues from gaming operations determined by the licensing tribe to be Class II or III are included.

Adoption of Fee Rates

The Commission will adopt preliminary annual fee rate(s) during the first quarter of each calendar year and final annual fee rate(s) for that year during the fourth quarter. Separate rates may be set for assessable gross revenues of $1,500,000 (1st tier) and for revenues over $1,500,000 (2nd tier). When adopted, the Commission will publish the rates in the **Federal Register** as a Notice.

Fee Rates for Current Year

The Commission has adopted a preliminary fee rate of 0.00% for assessable gross revenues of $1,500,000 1st tier) and 0.00% for revenues over $1,500,000 (2nd tier) for use beginning with the first quarter (January 1—March 31) of the current calendar year (1998). The Commission may change this rate during subsequent quarters when more information about the assessable gross revenue base becomes available. The last or final rate adopted will ultimately determine the amount of fees paid during the year. The Commission is publishing a Notice announcing this preliminary rate simultaneously with these regulations in the **Federal Register**.

Self-Regulation

If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of class II assessable gross revenues and 0% of class III assessable gross revenues. Later rulemakings will add the requirements for obtaining a certificate of self-regulation. The Commission is publishing in the **Federal Register** today its proposed rules for self-regulation of class II operations.

Reports and Payments

Gaming operations compute their fee payments by applying the rates adopted to their assessable gross revenues from the preceding calendar year. Gaming operations report their assessable gross revenues, fees, and calculations to the Commission with their quarterly payments. Payments and reports must be received by the Commission no later than March 31, June 30, September 30, and December 31, of each calendar year, beginning in 1998. As previously noted, payments and reports for the first quarter of 1998 will be due no later that 30 days following publication of this rule in the **Federal Register**, or April 13, 1998.

Computations

Briefly, the computations required for each quarter are:

(1) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(2) Multiply the previous calendar year's 2nd tier assessable gross revenues adopted by the Commission.

(3) Add (total) the results (products) obtained in steps (1) and (2) above.

(4) Multiply the total in (3) by the fraction representing the applicable quarter of the calendar year: 1st quarter—¼; 2nd quarter—½ (2/4); 3rd quarter—¾; and 4th quarter—1 (4/4).

(5) Subtract the amounts already paid by the operation for the current year and credits, if any, due for any previous year's overpayment from the amount determined in (4). (The Commission will compute and tell the gaming operations the amounts of deductible ''credits.'')

(6) The gaming operation should pay the amount computed in (5) for the quarter.

Examples

The regulations include examples of the computations at §§ 514.1(b)(3) and 514.1(c)(7).

Use of Adjusted Numbers

Basing the fees on the previous year's assessable gross revenues provides enough time to the gaming operations to finalize and submit adjusted numbers before the end of the third quarter of the calendar year. Furthermore, the use of preliminary and final rates by the Commission is intended to provide enough time for the Commission to determine the assessable gross revenue base before finalizing the rates for each calendar year.

Applicability

These regulations apply 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 although no fees will be due. Gaming operations of tribes with certificates of self-regulation are not required to file quarterly reports if no fees are payable.

Penalties and Interest

Penalties and interest may apply for failures to file quarterly statements and to pay fees when due. The Commission may withhold, deny or revoke required approvals for failures to pay fees, penalties and interest. Furthermore, the failure of a gaming operation to pay the annual fee required is a substantial violation and may subject the operation to an order of temporary closure of all or part of the gaming operation pursuant to § 573.6(a). Procedures for appealing such adverse actions are found at § 577.

Public Comments and Responses

The Commission received eighteen separate communications about the proposed rule during the 30 day comment period. The comments ranged from simple requests for more time to comment to comprehensive analyses of the contents of parts of the proposed rule. The Commission has thoroughly considered these comments and its decisions are set forth in the paragraphs that follow.

Extension of the Comment Period

One commenter requested that the comment period for the proposed rule be extended to allow time for additional comments.

Response: The NIGC decided not to extend the comment period because:

—Many thoughtful, substantive comments were received during the comment period provided,
—No new concerns about the proposed rules were presented in the request to extend the comment period, and
—The Commission must begin collecting additional fees to continue operating at its current level and begin its expansion.

Funding Increase

One commenter wrote that the Tribe supports an increase in funding for the NIGC because it understands that effective regulation is a key to continued strong support for Native American Gaming and to protect the integrity of Native American Gaming. Two writers said they fully support the NIGC having the resources necessary to do a complete and thorough job of regulating and, more importantly, assisting the Tribes in the regulation of the Indian gaming industry. Another commenter pointed out that without viable enabling legislation, the NIGC may have little choice other than to impose a uniform fee across the board on all class III gaming operations and hope that enough tribes fail to meet or exceed the ''Choctaw'' standard, such that the needed revenue comes into the NIGC.

Response: The NIGC acknowledges and appreciates the positive support for the funding increase. It too wants to do a complete and thorough job of regulating and, more importantly, assisting the Tribes in the regulation of the Indian gaming industry. As to the enabling legislation, the NIGC is also concerned. It is presently reviewing its options.

NIGC Budget

One commenter stated that the NIGC should not be able to unilaterally set its own budget.

Response: The NIGC does not unilaterally set its own budget. NIGC's annual budget, pursuant to, and limited by, the IGRA, must be coordinated with the Secretary of the Interior and included with the budget of the Department of the Interior in the President's budget. Any request for appropriated funds is subject to the Secretary's approval. Furthermore, the Commission's budget is reviewed by subcommittees and committees of the U.S. Senate and House of Representatives.

Fee Assessment Revenues

One commenter noted that all fee assessment revenue must fund only NIGC activities.

Response: Fee assessment revenue is used to fund NIGC activities only. Amounts not used in one year are carried forward to subsequent years and used then to fund NIGC activities.

Phase-In

Several commenters suggested that the NIGC should establish rates which will achieve the ceiling gradually, because doing so will not only allow tribes to budget for anticipated increases in fees but will allow the NIGC to determine over a period of time whether or not it in fact requires the maximum amount of fees to fulfill its regulatory obligations. The NIGC should work with the tribes to assess what regulatory services are necessary.

Response: The regulations do not require that the Commission increase the fees to $8 million in the first fiscal year. The NIGC agrees that the amounts of fees assessed should be increased incrementally to meet the growing needs of the Commission. However, the reader should also understand that while the fee cap was raised from $1.5 million to $8 million, the funding for the Commission is being increased from about $4.4 million to a maximum of $8.5 million. This is because the Commission is currently being funded by a combination of fees, savings and appropriations, and in 1999 it will be funded by fees alone.

Assessment Base

One commenter suggested that the assessment should not be based on gross revenues. Another commenter said the ''assessable gross revenues'' should include an allowance for salaries and other regular business expenses.

Response: IGRA specifically provides for the assessment to be based on gross revenues. The only deductible operating expense provided by the IGRA is the allowance for the amortization of structures. Regulation and the cost of

such regulation should be proportionate to the volume of gaming, rather than its profitability.

Fee Rates

Several commenters said that fee rates should reflect the services provided by the NIGC. Some of those suggested that the rates should be set equally among the number of tribes engaged in class II and class III gaming while another said that the NIGC should differentiate clearly between class II gaming and class III gaming.

Response: The NIGC believes that the fee rates will relate to the services provided by the NIGC—to the Indian gaming industry as a whole as well as to the individual operations. When the Congress amended the IGRA, it authorized the assessment of fees on class II and III gaming revenues. It did not distinguish between class II and III and did not require different assessment on each. The NIGC has likewise decided not to distinguish between class II and class III revenues at this time. Should there be some basis to do so in the future, the NIGC will consider amending these regulations at a later date.

Range of Authorized Fee Rates

One commenter said that the rate imposed on the ''assessable gross revenues'' is troubling. Such a rate on the gross revenues may, in fact, result in a higher dollar amount than net revenues. Other commenters pointed out that the IGRA amendments provide for maximum fees of 2.5% on the first 1.5 million of ''assessable gross revenues'' and 5% on the amount above 1.5 million of ''assessable gross revenues.'' These percentages strike them as being very high.

Response: The ranges of rates set forth in the regulations are the rates that are authorized, not necessarily the rates that will be assessed. There is an $8 million limit on the amount the NIGC can assess. Assuming the industry has assessable gross revenues of $6 billion and that class II and class III revenues are assessed at the same rate, the actual rate of assessment to collect $8 million would be 0.133%. An operation with $100 million of assessable gross revenues would pay $133,333 in fees while an operation with $10 million of assessable gross revenues would pay $13,333 in fees.

Tiers

One commenter stated that it is a good idea to have a ''tier'' structure for fees. A second commenter wrote that it is clear that Congress intends the Commission to continue the ''sliding fee'' system. A third commenter noted that Congress, in establishing the tiered fee structure, and in eliminating the minimum fee under the 1st tier, has authorized progressive rates that would impose a greater burden on larger, and presumably more profitable, operations. NIGC should change from the current flat-rate fee to a progressive fee structure. Further, nothing precludes the NIGC from setting progressive rates within the 2nd tier, so long as the maximum rate does not exceed 5%. Three other commenters contend that the two tier process is no longer relevant as a direct result of the addition of class III revenues and should be re-examined.

Response: The NIGC has decided to leave the tier structure in place without modification at this time. It provides flexibility in that it allows different rates for different groups of operations based on size and allows both a progressive and a regressive structure. While the NIGC has no immediate plans to use multiple rates within the second tier, it does believe that it may have the authority to do so.

Allowance for Amortization

Two commenters urged that in defining what is a proper allowance for amortization in arriving at assessable gross revenues, the NIGC should include such facilities as entertainment centers, hotels, and other ancillary facilities that clearly are designed to enhance gaming revenue but the revenue from which is not directly assessable by the NIGC.

Response: The regulations provide for the use of generally accepted accounting principles which require the matching of revenues and expenses. To allow the deduction of costs unrelated to the revenues being assessed would not be in accordance with generally accepted accounting principles. Furthermore, the revenues being assessed are the revenues of the gaming operation. The costs in question are not the costs of the gaming operation as defined in the regulations.

Another commenter believes that the regulations should clarify how the ''allowance for amortization of capital expenditures for structures'' will be determined.

Response: The regulations at § 514.1(b) (2) and (3) provide both the rules and an example.

Reporting Requirements

One commenter feels that the reporting requirements should not apply to self-regulated tribes inasmuch as they are exempt from Commission fees. In addition, the Commission should require information to be maintained and available for inspection rather than require submission of that information to the Agency.

Response: The Commission agrees that gaming operations of tribes with certificates of self-regulation that exempt entire operations from paying any fees should not be required to file the quarterly reports that support the fee payments and has revised its regulations accordingly. However, operations must submit quarterly reports even if no fees are due until the Commission determines that they are exempt from paying fees. The Commission does require, where appropriate, that gaming operations maintain and make available for inspection certain information. For example, § 571.14 requires a tribe to reconcile its quarterly fee assessment reports with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

Tribal Cap on Fees Payable

One commenter believes that a cap should be placed on the amount of fees which any tribe should pay to NIGC.

Response: There are already caps on the amounts of fees the gaming operations can be assessed. There are both the range of rates and the overall $8 million caps.

Duplication

One Tribe commented that Tribes will now be paying double for regulation of class III gaming. They point out that many Tribes are already paying fees to States for regulation and/or other purposes pursuant to their Tribal-State Compacts. Now NIGC will be assessing fees on class III revenues for regulation as well. Another Tribe commented that the proposed fee would cause them to be paying triple for the same services. Still another Tribe stated that Tribes should not pay for NIGC services that are already provided for by the Tribe and/or the state agencies.

Response: The NIGC agrees that tribes should not be paying more than once for the same services. Each of the various entities involved—the tribes, the states, the federal government—have a role to play in the regulation of Indian gaming. Those roles and responsibilities should not be redundant. The federal government serves a role separate from that of the tribes and states. It provides overall oversight for all Indian gaming, intervenes when state and/or tribal intervention is inappropriate, and takes action for violation of Federal laws. The three levels of government must, however, continue to work together to avoid overlap and duplication.

Credit for Other Costs of Regulation

Several commenters suggested that the Tribes should be given credit against their fees for regulation and other services provided by local governments. They pointed out that Tribal gaming operations pay substantial fees to fund state compact, IGRA and Tribal regulations and these fees should be credited against any fees paid to the NIGC.

Response: As discussed above, several entities have a role to play in the regulation of Indian gaming. Their roles and responsibilities are, or should be, complementary, not redundant. The work of each is measured and paid for in a unique manner. The work and cost of one tribal or state entity does not necessarily reduce the work and cost of the NIGC. The Tribe regulates the individual gaming operation; pursuant to a Tribal-State compact, the state may participate in the regulation of the Indian gaming industry of the state; and the NIGC focuses on the overall Indian gaming industry.

Economic Impact

One commenter thinks the proposed fee schedule will close down many marginal gaming operations and that the impact of the Fee Regulations on marginal gaming operations may be exacerbated by the exodus of ''self-regulated'' tribes from the fee paying pool and will eventually impose severe economic hardship on those Tribes which are not able to achieve this self-regulated status. Two other commenters pointed out that only those tribes that cannot afford regulatory schemes that equal or exceed the system used by the Mississippi Choctaw will be stuck with the entire $7 million price tag.

Response: The Commission acknowledges that more of a burden may be placed on ''marginal'' tribes if there is an exodus of self-regulated tribes from the fee structure. To mitigate that burden, the NIGC has initially decided to impose a fee on only the second tier, those revenues over $1.5 million. On the other hand, the Commission must implement and carry out the provisions of the IGRA as amended. To this end it is publishing in the **Federal Register** today an Advance Notice of Proposed Rulemaking to implement the self-regulation provision added to the IGRA by Public Law 105–83.

Hardship Exception

One commenter strongly urged the Commission to include another tier or an exception to the fee where the assessment would be greater than the net revenues. Another commenter urged that the non-compacted tribe, which is faced with a disproportionate burden in payment of the fee, should not be unfairly penalized.

Response: The Commission is sympathetic to the situations described, but the IGRA does not provide for such individual exceptions. The Commission's use of the tier system should provide some help in this regard.

Impact on Small Business Entities

One commenter believes that the Commission is incorrect in stating that the proposed rule will not have a significant impact on a substantial number of small business entities. He thinks that this rule will shut them and many other small tribal gaming operations down.

Response: The Commission does not believe that the impact will be grater that great given the $8 million cap. Only if the bulk of the Indian gaming industry becomes exempt from paying fees will the burden on the small business entities become so great.

Timing of Exemption From Fee Assessments

One commenter claimed that the NIGC has entirely failed to consider a critical element of fee assessment, i.e., a present exemption from fee assessments. It is not only unreasonable and unfair, but also arbitrary and capricious and clearly erroneous for the Commission to impose only that portion of the Congressional mandate that raises tribal fees and increases Commission revenues but delays until a later date, if at all, and abrogates, the tribal statutory entitlement to a present exemption from payment of the fees. Another commenter said that the NIGC should promulgate the rules governing the exemption prior to imposing fees on tribes that are indistinguishable from the Mississippi Choctaw. Yet another commenter argues that the NIGC must first allow the tribes the opportunity to apply for and receive a certificate of self-regulation before the subject fees may be lawfully assessed. Other commenters asserted that if the Mississippi Choctaw will be immediately exempt from application of the assessed fees, all tribes similarly situated should also be immediately eligible for this exemption. To do otherwise would lead to unfair preferential treatment which is discriminatory in nature. Several commenters said that the NIGC should issue regulations governing self-regulation as soon as possible.

Response: The NIGC agrees that if self-regulatory status is made available to one tribe, it should be made available to all tribes in a timely manner. In fact, it is publishing today proposed rules governing self-regulation of class II operations. The NIGC does not agree that self-regulatory status has been, or should be, made available automatically. Self-regulation status is an exception (exemption) to the general rule and any tribe seeking such status should be required to demonstrate its qualifications for such classification.

Scope of Exemption From Fee Assessments

One commenter suggested that the NIGC is now prohibited from assessing class II or class III fees against self-regulated gaming operations, that Section 2710(c)(5) of the IGRA was not expressly repealed by Congress but in effect has been superseded by Public Law 105–83. Another commenter asserted that new Section 18(a)(2)(C) of IGRA supersedes the old procedures under Section 11(c)(3) for a tribe to petition for a certificate of self-regulation from the Commission and thereby obtain a partial exemption from Commission fees.

Response: The NIGC does not agree with those interpretations. First, Section 2710(c)(5) and Section 11(c)(3) of the IGRA deal with class II while the provision in Public Law 105–83 and Section 18(a)(2)(C) of the IGRA deal with tribes such as the Mississippi Choctaw, who currently have only a class III operation. The NIGC believes that the Congress has authorized separate class II and class III self-regulation provisions. Consequently, the NIGC is publishing in the **Federal Register** today its proposed rules for self-regulation of class II operations and the Advance Notice of Proposed Rulemaking for class III operations.

Determination of Self-Regulation

One commenter contends that until the Commission determines which tribes are self-regulated and which are not, it may not properly assess any fees on Indian tribes.

Response: The Commission disagrees. The Commission's authority to assess fees is separate from its authority to determine which tribes are self-regulating. Furthermore, although class III self-regulated tribes may be exempt from the obligation to pay fees, that provision is not self implementing. Thus, regulations must be promulgated to determine which tribes are self-regulating.

NIGC's Class III Responsibilities

Two commenters stated that the NIGC has very few statutory duties or

responsibilities for class III gaming and what activities the NIGC does undertake for class III (such as approval of management contracts) are usually covered by fees paid by applicant tribes. Another commenter said that NIGC's only class III obligation is to receive the annual audits. And yet another commenter suggested that the Commission clarify in its regulations that it is authorized only to regulate class II gaming.

Response: The NIGC's responsibilities for class III gaming are considerably broader than these commenters suggest. Among other things, the NIGC is charged with:

—Determining whether the gaming operation is complying with all provisions of IGRA, any regulation prescribed by the Commission pursuant to the IGRA, or tribal regulations, ordinances, or resolutions approved under section 11 or 13 of the IGRA;

—Assure that the tribe has sole proprietary interest and responsibility for the conduct of the gaming activity;

—Assure that the net revenues from all tribal gaming are used for the specified purposes;

—Assure that the construction and maintenance of the gaming facility, and the gaming itself is conducted in a manner which adequately protects the environment and the public health and safety; and

—Determine that any class III gaming is conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State that is in effect.

Texas Rather Than User Fees

One commenter suggested that the fee regulations proposed by the Commission provide for taxes rather than user fees.

Response: The Commission disagrees. The fee assessments relate to the regulation of the Indian gaming industry and the provision of services to individual operations and the industry as a whole.

Class II and Class III Operation

Response: A gaming operation that conducts both class II and class III gaming is subject to the provisions applicable to class II, class III, and both class II and class III. There may be class II provisions that do not apply to the class III portion of the operation and there may be class III provisions that do not apply to the class II portion of the operation.

Negotiated Rulemaking

One commenter suggested that negotiated rulemaking should be used for the fee formula, self-regulating tribes, and other issues.

Response: The Commission agrees that negotiated rulemaking should always be considered but in the situations at hand, it believes that negotiated rulemaking is not practicable for the fee and self-regulating regulations. The Commission's budgetary needs required immediate decisions to implement the change in fees. Furthermore, the Commission concurred with commenters that regulations on self-regulation should be finished as soon as practicably possible. As a result, interested parties have been given ample opportunity to review, comment on, and discuss with Commissioners and staff the Commission's thinking with respect to the proposed regulations.

Regulatory Procedures

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The additional entities becoming subject to these regulations as a result of the changes now being made are generally larger than those entities presently covered. Furthermore, the fees that will be paid by the entities presently covered will be less than the fees they are presently paying.

Paperwork Reduction Act

The information collection requirements contained in paragraph (c) of this regulation have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0007. The information is being collected to determine the assessable gross revenue of each gaming operation and the aggregate assessable gross revenues of all gaming operations. The information will be used to set and adjust fee rates and to verify the computations of fees paid by each gaming operation. Response is mandatory.

National Environmental Policy Act

The Commission has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Larry D. Rosenthal,

Chief of Staff, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 514

Gambling, Indians-lands, Reporting and recordkeeping requirements.

Accordingly, 25 CFR Part 514 is amended as follows:

PART 514—FEES

1. The authority for Part 514 continues to read as follows:

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

2. Section 514.1 is amended by revising paragraphs (a) introductory text, (a)(4), (b) introductory text, (b)(4), (c) introductory text, (c)(1), (c)(2), (c)(5) introductory text, (c)(8), and (d) introductory text, by removing paragraph (g), and by adding paragraph (a)(6), to read as follows:

§ 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.

* * * * *

(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.

* * * * *

(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.

* * * * *

(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.

* * * * *

(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—

* * * * *

(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).

* * * * *

(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.

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