National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESMENT

To: Winnebago Tribe of Nebraska
Attn: Matthew Pilcher, Chairman
(Agent for Service of Process)
P.O. Box 687
Winnebago, Nebraska 68071
FAX: (402) 878-2963

1. Under the authority of 25 U.S.C. § 2713(a) of the Indian Gaming Regulatory Act (IGRA) and the regulations of the National Indian Gaming Commission (NIGC) at 25 C.F.R. part 575, the Chairman of the NIGC hereby gives notice of his intent to assess a civil fine against the Winnebago Tribe of Nebraska (Tribe or Respondent), located in Winnebago, Nebraska for violations of IGRA, 25 U.S.C. § 2717, and NIGC regulations, 25 C.F.R. § 514.1(a),(c), as set forth in detail in Notice of Violation No. NOV 08-25, issued on November 4, 2008. NOV 08-25 was issued for failure to submit quarterly statements and the requisite fees for two gaming operations and failure to submit timely fees for one gaming operation.

2. Pursuant to 25 U.S.C. § 2713(a) and 25 C.F.R. § 575.4, the Chairman of the NIGC may assess a civil fine, not to exceed $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each violation, cited in a notice of violation issued under 25 C.F.R. § 575.3. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation for purposes of the total civil fine assessed. 25 C.F.R. §§ 575.3, 575.4(a)(2).

3. The NIGC regulations at 25 C.F.R. § 575.5 provide that, within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine. In this case, the Respondent did not submit information regarding the violation under 25 C.F.R. § 575.5.

4. The Chairman has considered the factors set forth in 25 C.F.R. § 575.4 and finds the following:

    i. Economic benefit of noncompliance. Respondent obtained limited economic benefit from the untimely filing of the quarterly statements and requisite fees. By not paying the requisite fees in a timely manner, the Tribe was able to collect interest on money that otherwise should have been paid to the NIGC.

Specifically, the quarterly statement and fee payment for the quarter ending March 31, 2008 for Winnavegas Casino was received by the NIGC on October 2, 2008, 185 day late. The Tribe was able to collect interest on the $3,262.00 fee payment that was due to the NIGC on or before March 31, 2008.

The quarterly statement and fee payment for the quarter ending June 30, 2008 for Winnavegas Casino was received by the NIGC on October 2, 2008, 94 days late. The Tribe was able to collect interest on the $3,262.00 fee payment that was due to the NIGC on or before June 30, 2008.

The quarterly statement and fee payment for the quarter ending September 30, 2008 for Winnavegas Casino was received by the NIGC on October 2, 2008, 2 days late. The Tribe was able to collect interest on the $3,262.00 fee payment that was due to the NIGC on or before September 30, 2008.

ii. Seriousness of the violation. NIGC operations are funded entirely from the annual fees it receives from gaming tribes; therefore, the prompt payment of such fees is of critical importance to the NIGC. The annual fees collected by the NIGC are necessary in order to fund the agency's oversight and regulation of Indian gaming and are based up on the quarterly statements submitted by gaming operations. NIGC must set a fee rate sufficient to fund its annual budget, yet may not exceed the fee cap set by Congress. Thus it is imperative that the NIGC receive quarterly statements from the gaming operations in a timely manner so that the NIGC is able to set accurate preliminary and final fee rates.

iii. History of violations. The Tribe has not had a prior notice of violation within the past five (5) years.

iv. Negligence or willfulness. NIGC regulations clearly state the due dates of the quarterly statements and requisite fee payments. Furthermore, NIGC posted the notice of the fee rate in its online reading room and mailed a copy of the notice to each gaming operation. The Tribe's failure to submit quarterly statements and the requisite fee payments and untimely submission of quarterly statements and fee payments was therefore negligent.

v. Good Faith. A civil fine may be reduced based upon the degree of good faith of a respondent in attempting to achieve rapid compliance after notice of a violation. The Tribe did submit the untimely quarterly statements and requisite fee payments for the Winnavegas gaming operation after they were contacted by a NIGC Field Investigator about them and submitted the quarterly statements for the Iron Horse and Native Star on November 14, 2008, ten (10) days after the notice of violation was issued. The quick submission of Iron Horse and Native Star's documents does show a good faith attempt to rectify the failure to submit. This does not, however, excuse the late submission of quarterly statements for the gaming operations.

5. WHEREFORE, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of $35,000 (thirty-five thousand dollars) is assessed on the Respondent for failure to submit quarterly statements for two gaming operations, Iron Horse Casino and Native Star Casino, and untimely submission of quarterly statements and fee payments for one gaming operation, Winnavegas.

6. After balancing the factors reference above, the Chairman believes a $35,000 fine is appropriate for the reasons stated above.

7. Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amount remaining unpaid after their due date. 31 U.S.C. § 3717, 25 C.F.R. § 513.5(a).

8. Pursuant to 25 C.F.R. § 577.3, within 30 (thirty) days after service of this Notice of Proposed Civil Fine Assessment, Respondent may appeal the proposed fine to the full Commission by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, D.C. 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, Respondent must file with the NIGC a supplemental statement that sets forth with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to present oral testimony or witnesses at the hearing, Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. Respondent 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.

Dated this 15 day of December 2008.

Philip N. Hogen
Chairman

Heather L. McMillan
Staff Attorney