National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-00-09

To: Delores Pigsley, Chairman
Confederated Tribes of Siletz Indians of Oregon
P.O. Box 549
Siletz, Oregon 97380

Agent for Service of Process:

Brenda Bremner, General Manager
Confederated Tribes of Siletz Indians of Oregon
P.O. Box 549
Siletz, Oregon 97380

1. Under the authority of 25 U.S.C. § 2713 (a) and 25 C.F.R. § 575, the Chairman of the National Indian Gaming Commission (NIGC) hereby provides notice of his intent to assess a civil fine against the Confederated Tribes of Siletz Indians of Oregon (Respondent) for violations of 25 C.F.R. § 522.4(b)(2); Section 8 of the Tribal-State Compact; Appendix A, Sections I(A)(2)(b) and II(C)(1)(g) of the Tribal-State Compact; 25 U.S.C. § 2701(b)(2)(B); and 25 U.S.C § 2710(d)(1)(C) as set forth in detail in Notice of Violation No. NOV-00-09, issued on June 15, 2000, which concludes that the award of complimentary items for personal use is not an authorized use of net revenues and the lack of controls implemented to regulate the award of complimentary items fails to safeguard the gaming assets.

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. § 573.3. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 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, 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. Respondent submitted information to the NIGC on July 14, 2000.

4. This violation encompasses two distinct types of conduct and thus two distinct threats to the integrity of tribal gaming. The first activity is the wrongful appropriation of tribal gaming revenue or assets for the personal use of individual tribal members. This violation is most serious. The second activity is an accounting problem; it is simply the use of tribal gaming revenue for what may otherwise be legitimate governmental purposes but which should not be counted as gaming operation expenses. The Chairman has considered the factors prescribed in 25 C.F.R. § 575.4, for each of these activities, as follows:

   i. Economic benefit of noncompliance. Individuals have benefited by their personal use of tribal gaming revenues. Individual Tribal Council members benefited economically in the amount of approximately $18,000. To the extent complimentary items were charged to the Tribal Council for bona fide tribal government expenses, the Tribal Council did not benefit from noncompliance.

   ii. Seriousness of the violations. The appropriation of tribal gaming revenues for personal use is a serious threat to the integrity of tribal gaming. First, such activity creates a serious risk that a member will exploit the tribe's gaming operation in his or her own self-interest. Second, IGRA provides that tribal governments, not individual tribal members, are to determine the appropriate use of tribal gaming revenues. Such activities undermine the right of the tribal government to make these decisions about tribal assets. As for the second activity that the violation addresses, that is, the failure of the Tribal Council to assure that its activities are properly documented and accounted for as tribal government activities and expenditures, rather than gaming operation expenses, the violation is less serious. It does, however, indicate a systemic problem that requires revision.

   iii. History of violations. NOV-97-A-091 was settled on December 16, 1997. The NOV concluded that the Respondent failed to submit an audit report for the Respondent's bingo facility.

   iv. Negligence or willfulness. The Tribal Council has given no indication that it intends to place any real limit on the issuance of complimentary items for the Tribal Council members or Board of Directors. This failure to implement a system to prevent abuse constitutes negligence.

   v. Good faith. After being notified of the problems associated with the appropriation of complimentary items by individual Tribal Council members, Respondent adopted a complimentary policy on February 11, 2000. In response to NOV-00-09, Respondent has further attempted to refine its system for accounting of complimentary items. The Siletz Tribal Gaming Commission is drafting regulations to cover the audit of complimentary items. The Board of Directors has directed

the Gaming Operation to revise its categorization of complimentary items. However, that direction apparently allows for complimentary items to the Tribal Council members in contradiction of its February 11, 2000, complimentary policy. See July 14, 2000, Response to Paragraph 4. Accordingly, though incomplete, the Respondent has made some good faith efforts to rectify the circumstances that allowed the violation to arise.

WHEREFORE, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of $10,000 (ten thousand dollars) is assessed on the Respondent for allowing individuals to use tribal game revenues for personal use, for accounting for Tribal Council expenditures as gaming operating expenses, and for failing to establish controls that safeguard the assets while assuring that functions are properly segregated. This above-described amount represents an appropriate balancing of the factors cited above.

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, DC 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 Commission 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.

For further information contact Penny Coleman, Deputy General Counsel, or Danna R. Jackson, Staff Attorney, at (202) 632-7003.

Dated this 9th day of August 2000.

Montie R. Deer
Chairman

CERTIFICATE OF SERVICE

I do hereby certify that I have this 9th day of August 2000, transmitted via facsimile, Notice of Proposed Civil Fine Assessment, CFA-00-09, issued to the Confederated Tribes of Siletz Indians of Oregon, to the following person(s):

Delores Pigsley, Chairman
Confederated Tribes of Siletz Indians of Oregon
PO Box 549
Siletz, Oregon 97380

Service of Process Agent
Brenda Bremner, General Manager
Confederated Tribes of Siletz Indians of Oregon
PO Box 549
Siletz, Oregon 97380

Juanita M. Mendoza (Signature)

Juanita M. Mendoza (Print)

on behalf of the
National Indian Gaming Commission

NATIONAL INDIAN GAMING COMMISSION
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