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Frequently Asked Questions – Audited Financial Statement Requirements

The most current version of this document is available at www.NIGC.gov.

The NIGC Division of Compliance maintains this list of Frequently Asked Questions (FAQ) in consultation with the NIGC’s Office of General Counsel and the Commission. This collection of FAQs is updated as needed. To propose a question for this FAQ list, please coordinate with a Tribal Gaming Regulatory Authority (TGRA) and submit the question to audit_mics_inquiry@nigc.gov. The NIGC encourages all TGRAs to remain in close communication with their NIGC Region Office and assigned NIGC Auditor as tribal gaming operations assess and address the questions associated with the Audited Financial Statement (AFS) requirements.

1. **Question:** Who is required to submit an audited financial statement (AFS)?

Answer: Each tribe is required to submit to the NIGC financial statements covering all financial activities of each class II and class III gaming operation on the tribe’s Indian lands for each fiscal year. NIGC Regulation 25 C.F.R. § 571 Subpart D outlines the requirements for the preparation and submission of financial statements. The financial statements must be audited by a CPA unless a) the gaming operation(s) meets the criteria in § 571.12(c) and qualifies to submit a reviewed financial statement in lieu of an audit or b) meets the criteria in § 571.12(f) and qualifies as a tribal or charitable operation that has gross gaming revenues of less than \$50,000 during the prior fiscal year. The annual submission requirements and deadlines are the same for both audited and reviewed financial statements. Throughout the remaining FAQ, any reference to AFS requirements is inclusive of Reviewed Financial Statements (RFS) unless explicitly described otherwise.

2. **Question:** Are there any allowable exemptions to the AFS submission requirement?

Answer: There are only two (2) potential exemptions to the AFS submission requirement.

- a. A tribe may submit a reviewed financial statement in lieu of an audit for gaming operations that meet the criteria in § 571.12(c).
 - b. A tribe may submit a notice and certification to the NIGC for gaming operations that meet the criteria in § 571.12(f).
3. **Question:** When is the Audited Financial Statement due?

Answer: The financial statements are required to be submitted within 120 days after the end of the fiscal year. § 571.13(a) states, “Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by §571.12, together with management letter(s), and other documented auditor communications and/or reports as a result

of the audit setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation.”

4. **Question:** How can the required financial statements be submitted?

Answer: Tribes may submit the Audited Financial Statements electronically, paper copies by mail, or both. Electronic submissions can be made by email to Financials_AUPfilings@nigc.gov. Paper copies can be mailed to the following address:

NIGC Attn: Finance
c/o Department of the Interior
1849 C Street, N.W.
Mail Stop # 1621
Washington, DC 20240

Mailed copies should be postmarked by the due date and electronic copies should be emailed by the due date unless the deadline falls on a weekend or holiday, which pushes the due date to the next business day.

5. **Question:** Which management letters are we required to submit with the AFS?

Answer: A tribe must also submit with the Audited Financial Statements the following management letters that may accompany the CPA’s audit report:

- The Auditor's Communication with Those Charged with Governance
- Communicating Internal Control Related Matters Identified in an Audit

§571.13(a) states, “Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by §571.12, together with management letter(s), and other documented auditor communications and/or reports as a result of the audit setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation.” These management letters are important to the understanding of the financial statements and the overall assessment of the gaming operation.

Under NIGC regulation, a management letter is considered all documented auditor communications and/or reports as result of the audit or review services provided. Bulletin No. 2009-1, titled *Relationship of SAS 112 and SAS 115 “Communicating Internal Control Related Matters Identified in an Audit” and SAS 114 “The Auditor’s Communication With Those Charged With Governance” to 25 C.F.R. § 571.13. “Copies of Audit Reports.”*, clarified which management letters the tribes were required to submit to the NIGC in addition to the financial statements. The AICPA routinely revises its pronouncements and the Statements on Auditing Standards referenced in the bulletin have been superseded. As of the date of these FAQs, SAS 114 “The Auditor’s Communication with Those Charged with Governance” has been superseded by AU-C section 260, and SAS 112/115 “Communicating Internal Control Related Matters Identified in an Audit” has been superseded by AU-C section 265. Finally, if AU-C sections 260 & 265 are superseded in the future, then a tribe is still required to submit communicating internal control matters and communication with governance management letters with the Financial Statements.

6. **Question:** Does the amount of gaming revenues in a given fiscal year affect the requirement to submit the AFS?

Answer: As described above, the only impact that revenue may have on AFS submission requirements is the potential for the exclusions described in Question #2, above.

7. **Question:** If requested, will the NIGC grant an extension for the AFS submission?

Answer: No. IGRA and NIGC regulations do not provide for extensions to the statutory and regulatory deadlines. If a tribe or operation encounters a situation where the Audited Financial Statement will be late and not meet the required submission date, then the Tribe should notify the region and/or the assigned auditor to make the NIGC aware of the situation and provide a date by which the AFS is expected to be submitted. In some instances, the NIGC may be able to provide additional technical assistance.

8. **Question:** What if the operation closes permanently?

Answer: A tribe is still required to submit audited financial statements covering all financial activities of any gaming operation on the tribe's Indian lands for the period between the previous financial statements and the closure. Under § 571.13(c), it states, when gaming ceases to operate and the tribal gaming regulatory authority has terminated the facility license the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results covering the period since the period covered by the previous financial statements. The submission must be sent to the Commission within 120 days after the cessation of gaming activity or upon completion of the tribe's fiscal year.

9. **Question:** What if the operation changes its fiscal year?

Answer: A tribe would need to account for the stub period in a financial statement submission. Specifically, § 571.13(b) states, "If a gaming operation changes its fiscal year, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results of the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be sent to the Commission within 120 days after the end of the stub period, or a tribe may incorporate the financial results of the stub period in the financial statements for the new business year."

10. **Question:** Is a tribe required to submit an AFS if the operation was only open for one (1) day of the fiscal year?

Answer: Yes. A tribe is required to submit an audited financial statement for the fiscal year in which there is gaming on a tribe's Indian lands. Financial statements that present a stub period are only applicable in the instance of a change in fiscal year-end, as stated in § 571.13(b). The tribe determines its gaming operation's fiscal year-end. Advanced planning and consideration of changing an operation's fiscal year-end and the use of a stub period are encouraged if it is beneficial for operations that are planning on opening at or near the end of the fiscal year.

11. **Question:** Can a tribe engage a CPA to do a combined audit of all the tribe's gaming operations?

Answer: A tribe may submit consolidated audited financial statements for some or all a tribe's gaming operations, as stated in § 571.12(d) if the conditions in § 571.12(d)(1-4) are satisfied. They are as follows:

1. The tribe is the owner of all the facilities;
2. The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;
3. The consolidated financial statements include consolidating schedules for each gaming place, facility, or location; and
4. The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

Additionally, if a tribe has multiple gaming operations on the tribe's Indian lands and each individual operation had gross gaming revenues of less than \$2,000,000 during the prior fiscal year, then the tribe can submit consolidated reviewed financial statements, as stated in §571.12(e) if the conditions in § 571.12(e)(1-4) are satisfied. They are as follows:

1. The tribe chooses to consolidate the financial statements of the gaming operations;
2. The consolidated financial statements include consolidating schedules for each operation;
3. The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location; and
4. The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.