

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV - 18 - 02

To: Mayor Karl Cook
Metlakatla Indian Community
P.O. Box 8
Metlakatla, AK 99926

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Metlakatla Indian Community (Tribe), operating MIC Bingo, has violated the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and the Tribe's gaming ordinance by failing to submit an annual audit with comparative financial statements and Agreed Upon Procedures report for fiscal year 2017 to the NIGC in a timely manner.

2. Authority

Under IGRA and NIGC regulations, the Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provisions of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

3. Applicable Federal Law and Tribal Ordinance Provisions

- A. IGRA requires an annual audit of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC. 25 U.S.C. § 2710(b)(2)(C).
- B. NIGC regulations define "gaming operation" as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses. 25 C.F.R. § 502.10.
- C. NIGC regulations require that a tribe shall prepare comparative 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. 25 C.F.R. § 571.12(a)
- D. NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of

each gaming operation located on Indian lands for each fiscal year. 25 C.F.R. § 571.12(b).

- E. The NIGC regulations further require a tribe to submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. § 571.13.
 - F. The NIGC regulations also require a tribe to submit within 120 days after the end of the fiscal year an Agreed Upon Procedures report for each class II operation. 25 C.F.R. § 543.23(d). The AUP report details the state of compliance with Class II Minimum Internal Control Standards.
 - G. The Metlakatla Indian Community Gaming Ordinance, Section 4 4.5, approved by the NIGC Vice-Chairman on June 27, 1997 (Ordinance), requires the Tribe to "cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit to the National Indian Gaming Commission."
4. Role of Independent Audit Report and Agreed Upon Procedures

Submission of the annual independent audit report and Agreed Upon Procedures by a certified public accountant is critical to the NIGC's mission to protect the integrity of Indian gaming. A CPA's ability to conduct an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principles provides a certain level of assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

The Agreed Upon Procedures report reviews the internal controls, which are the primary procedures used to protect the integrity of casino funds and games, and are a vitally important part of properly regulated gaming. Inherent in gaming operations are concerns related to customer and employee access to cash, questions of fairness of games, and the threat of collusion to circumvent controls. Submission of the Agreed Upon Procedures report promotes IGRA's purposes by ensuring that a tribe is the primary beneficiary of the gaming operation and protecting gaming as a means of tribal revenue.

5. Circumstances of the Violation

- A. The Metlakatla Indian Community is a federally recognized Indian tribe with tribal headquarters located on the Tribe's reservation in Metlakatla, Alaska. The Tribe commenced gaming at MIC Bingo in 2002.

- B. Based on the most recent financial statement and audit submitted to the NIGC, the gaming operation's fiscal year ends on September 30.
- C. The Tribe operated its gaming operation, MIC Bingo, located at 8th and Waterfront, in Metlakalta, Alaska, from October 1, 2015 to September 30, 2016 (Fiscal Year 2016) ; and, October 1, 2016 to September 30, 2017 (Fiscal Year 2017).
- D. During Fiscal Years 2016 and 2017, MIC Bingo offered Class II gaming.
- E. IGRA requires that tribes submit annual audits of each gaming operation. 25 U.S.C. § 2710(b)(2)(C). NIGC regulations further require a tribe to prepare comparative financial statements covering all financial activities of each class II and class III gaming operation for each fiscal year, require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation for each fiscal year, and require a tribe to submit an Agreed Upon Procedures report for each class II operation. 25 C.F.R §§ 571.12(a-b), § 543.23(d). The NIGC regulations also require a tribe submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s), and the Agreed Upon Procedures report to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. §§ 571.13, 543.23(d). In addition, the Tribe's Gaming Ordinance requires the Tribe to provide an annual independent audit to the NIGC. Metlakatla Indian Community Gaming Ordinance, Section 4 4.5 (June 27, 1997).
- F. The Agreed Upon Procedures report, financial statements, and audits for the Tribe's gaming operation for Fiscal Year 2016 were due to the NIGC on or before January 28, 2017.
- G. The Tribe failed to submit the Fiscal Year 2016 Agreed Upon Procedures report, comparative financial statement, and audit to the NIGC by January 28, 2017.
- H. The audited financial statements for Fiscal Year 2016 were submitted by the Tribe to the NIGC on May 23, 2017; 115 days late. The financial statements did not include comparative amounts from the prior audit period. In addition, the Tribe submitted the Agreed Upon Procedures report, and unaudited financial statements, on March 16, 2017; 47 days late.
- I. On March 16, 2017, in an e-mail responding to the Letter of Concern, the Tribe submitted the Fiscal Year 2016 Agreed Upon Procedures report and unaudited financial statements. The Tribe's Financial Officer explained that it was transitioning to a new business computer system and anticipated submitting the audited financial statements before June 30, 2017.

- J. On May 23, 2017, in the e-mail sent to the NIGC submitting audit related documents, the Tribe's Financial Officer explained that the delayed submission resulted from a transition to a new accounting software system.
- K. The Agreed Upon Procedures report, comparative financial statements, and audit for the Tribe's gaming operation for Fiscal Year 2017 were due to the NIGC on or before January 28, 2018.
- L. The Tribe failed to submit the Fiscal Year 2017 Agreed Upon Procedures report, comparative financial statement, and audits to the NIGC by January 28, 2018.
- M. The Agreed Upon Procedures report, audited financial statements, and audit for Fiscal Year 2017 were submitted by the Tribe to the NIGC on February 23, 2018; 28 days late. In addition, the financial statements did not include comparative amounts from the prior audit period.
- N. On March 9, 2017, as the Tribe has a documented history of late audit submission, the Director of Compliance issued a Letter of Concern to the Tribe for failure to submit the Fiscal Year 2016 an annual audit of the financial statements and Agreed Upon Procedures report. The letter advised the Tribe that the audited financial statements and Agreed Upon Procedures report, or a plan of action, should be submitted by March 20, 2017. The letter informed the Tribe that if the violation was not corrected, it may result in the issuance of a Notice of Violation, Civil Fine Assessment, and an Order of Temporary Closure.
- O. On August 25, 2017, the NIGC sent correspondence to the Tribe providing written clarification of NIGC's regulations relating to the submission of comparative audited financial statements and also offered assistance to help ensure future compliance. This correspondence noted that while the Tribe submitted audited financial statements for the Fiscal Year 2016, the statements were not comparative and explained how the Tribe could satisfy NIGC regulations.
- P. On January 17, 2018, NIGC staff called the MIC Bingo General Manager to discuss the upcoming deadline to submit the Agreed Upon Procedures report and audited financial statements. At the time, the MIC Bingo General Manager stated that the submission would be timely. On January 17, 2018, NIGC staff also sent an e-mail to the MIC Bingo General Manager, to remind the Tribe of the upcoming deadline and offered assistance to help address any concerns or issues the Tribe may be experiencing.
- Q. On January 23, 2018, NIGC staff e-mailed the Tribe's Financial Officer and the MIC Bingo General Manager to again to remind the Tribe of the upcoming deadline.

- R. On January 26, 2018, the MIC Bingo General Manager called NIGC staff and indicated that as a result of accounting software issues and an earthquake, which disrupted the audit, the submission of the Agreed Upon Procedures report and audited financial statements for Fiscal Year 2017 will be delayed.
- S. On February 14, 2018, NIGC staff e-mailed the MIC Bingo General Manager to inquire whether the audited financial statements were submitted. On February 14, 2018, the MIC Bingo General Manager called the NIGC and informed NIGC staff that the Agreed Upon Procedures report was complete, and once the financial statements were reviewed, the audited financial statements and Agreed Upon Procedures report would be submitted to the NIGC.

6. Measures Required to Correct the Violations

With regards to the Fiscal Year 2017 audit, no remedial action can correct the violation of failing to submit the Agreed Upon Procedures report, comparative financial statements, and audit 28 days late. 25 U.S.C. § 2710(b)(2)(C); 25 C.F.R. §§ 571.12(a); 571.13(a). Submission of a comparative Financial Statement will cure the on-going violation, and in any event, the documents must to be submitted to the NIGC within 14 days of receipt of this Notice of Violation. The Tribe should implement improved controls to ensure timely submissions of future comparative financial statements and audits.

With regards to the Fiscal Year 2016 audit, no remedial action can correct the violation of failing to submit the comparative financial statements and submitting the audited financial statement 115 days late, and the Agreed Upon Procedures report 47 days late. 25 U.S.C. § 2710(b)(2)(C); 25 C.F.R. §§ 571.12(a); 571.13(a). As mentioned above, implementation of improved controls will help ensure timely future submissions.

7. Appeal

The Tribe may appeal this Notice of Violation within 30 days of service. The Tribe may either: 1) request a hearing before a Presiding Official under 25 C.F.R. Part 584; or, 2) 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 pursuant to 25 C.F.R. Part 585. In any event, an appeal of this Notice of Violation should be submitted to the NIGC at the following address:

NIGC Attn: Office of General Counsel
1849 C Street NW
Mail Stop # 1621
Washington, DC 20240

The Tribe has a right to assistance of counsel in such an appeal. If you file a notice of appeal, you must refer to this Notice of Violation.

If the Tribe elects to have a hearing, the Tribe must file a brief with the Commission (within ten days after filing a notice of appeal), which states with particularity the relief desired and the grounds in support including, when available, supporting evidence in the form of affidavits. If the Tribe prefers a closed hearing, it must include, with the brief, a request to do so and why. If the Tribe wished to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the brief. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony. The Tribe 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.

8. Fine – Submission of Information

The violation cited above may result in the assessment of a civil fine against the Tribe in an amount not to exceed \$50,276 per violation per day. Under 25 C.F.R. § 575.5(a), the Tribe may submit written information about the violation to the Chairman within 15 days after service of the NOV (or such longer period as the Chairman may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 27 of March 2018.



Jonodev O. Chaudhuri
Chairman