

INTERACTIVE GAMING AND TAXES – NEVADA’S LEGISLATURE CONSIDERS GAMING AMENDMENTS AND THE IRS CLARIFIES SLOT MACHINE WITHHOLDING REQUIREMENTS

Nevada Legislature Considers Changes Critical to Gaming Industry

In the 2013 Nevada legislative session, the Nevada Legislature is considering a number of key legislative changes that would impact the gaming industry. Companies involved in gaming in Nevada should keep an eye on the following recently introduced bills:

Interactive Gaming

Currently, a Nevada-licensed operator of interactive gaming may only offer such gaming to individuals located outside the State of Nevada if the Nevada Gaming Commission (the “Commission”) determines that a federal law has been enacted that authorizes that specific type of interactive gaming, or if the Board or the Commission is notified by the U.S. Department of Justice that federal law permits the operation of that specific type of interactive gaming. In a bill draft submitted to the Nevada legislature in January, 2013, the Nevada Gaming Control Board (the “Board”) has proposed an amendment to this language that would allow Nevada’s governor to enter into agreements with other states that legalize Internet poker. Assembly Bill 5 would remove the requirement that interstate interactive gaming licenses are ineffective until such gaming is authorized by either federal legislation or the United States Department of Justice, but adds the requirement that interstate interactive gaming must first be permissible under federal law.

Live Entertainment Tax

NRS 368A pertains to Nevada’s Live Entertainment Tax (“LET”). The LET is potentially applicable to any venue in which live entertainment is provided to patrons. The Board collects the LET from licensed gaming establishments.

Assembly Bill 3 would give the Board the authority to amend rules governing the maintenance and availability of records, the liability of the taxpayer, lessee, assignee, or transferee of certain premises, and the penalties for violation. The proposed legislation would give the Board the authority to pursue disciplinary action where the taxpayer is a licensed gaming establishment and fails to maintain proper LET records.

In addition, Assembly Bill 3 would give the Board authority to pursue other penalties and remedies for a licensee’s failure to report, pay, or truthfully account for a tax, including disciplinary procedures applicable to gaming licensees outlined in NRS 463.310 through NRS 463.318. Finally, the proposed legislation provides that if a licensed gaming establishment violates any Commission regulation, such violation

constitutes an unsuitable method of operation. If enacted as currently proposed, every violation of the Commission's regulations could subject a gaming licensee to a potential disciplinary procedure.

Other Gaming Bills

Senate Bill 9 would change the registration requirements for limited partners or members holding a 5% or less ownership in a limited partnership or limited liability company licensee. Instead of registering with the Board after acquiring ownership, a person would be required to register with the Board before acquiring the ownership interest in the limited partnership or limited liability company. Senate Bill 9 would also require the registration of persons that own, operate or have significant involvement in independent testing laboratories. Finally, this Bill would revise the definitions of "cashless wagering system," "gaming employee," "gross revenue" and "wagering credit."

Senate Bill 10 amends NRS 463.387 and NRS 368A.260, which govern refunds for overpayments of state fees or taxes. This Bill would allow the Board to charge fees for processing claims for refunds.

IRS Clarifies Relationship of Backup Withholding to Slot Machine Winnings

Section 3402(q) of the Internal Revenue Code (the "Code") generally requires that a gaming establishment withhold tax on gambling winnings. However, § 3402(q)(5) exempts slot machine winnings from the regular withholding requirement. If slot machine winnings are not otherwise subject to withholding, an alternate withholding regime, known as backup withholding, will require a gaming establishment to withhold from slot machine winnings if, and only if, the payee provides a taxpayer identification number ("TIN") that does not contain the proper number of digits.

In CCA 201246028, a gaming establishment prepared and filed a number of Form W-2Gs for the year 2006 related to slot machine winnings. The IRS examined the Form W-2Gs and determined that some of them contained incorrect TINs (that were not inconsequential errors). In 2008, the IRS issued Notice 972(CG) "A Penalty is Proposed for Your 2xxx Information Returns – Action Required" and subsequently the IRS requested the gaming establishment to provide back-up withholding notices prepared and sent to partners for which there was a TIN mismatch. Issuance of Notice 972 usually notifies the taxpayer that the IRS intends to impose a penalty under Section 6721 of the Code for failure to file information returns. The gaming establishment refused to provide copies of the notices (which presumably they did not prepare or send) and filed a protest.

Conclusion of the IRS

The backup withholding rules apply if and only if the payee does not furnish a TIN to the payor. Failure to furnish a TIN includes a situation where the payee fails to provide a TIN at all, but also includes a situation where the payee provides a TIN that does not contain the proper number of digits. However, in this situation, an incorrect TIN (containing the correct number of digits) did not invoke the backup withholding rules.

Gaming

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