

Regulation and Auditing of Indian Gaming Operations

Dennis P. Gauger

Partner

Deloitte & Touche LLP

Background

In the United States, Indian tribes are governments. Tribal governments, like state and local governments, have responsibilities for the well-being of their citizens including housing, medical, food, education and job training needs. Several tribes have turned to gaming activities to fund their governmental programs. As a result, tribal gaming activities have become the most (and in many cases, the only) successful economic development initiatives conducted on Indian lands.

As sovereign entities, tribal governments are recognized as having the right to engage in gaming. This authority was confirmed by Congress in 1988 with the passage of the Indian Gaming Regulatory Act (IGRA). IGRA separated gaming into three classes and allocated regulatory jurisdiction over each class among tribal, federal and state sovereigns. IGRA also created the National Indian Gaming Commission (NIGC) and gave it certain regulatory and investigatory authority.

Class I gaming includes games of minimal value or traditional Indian gaming played as part of or in context with ceremonies or celebrations, and is subject to exclusive tribal regulatory jurisdiction.

Class II gaming includes bingo and similar games, including pulltabs and punchboards, as well as non-banking card games that are either expressly allowed or not expressly prohibited by state law. A banking card game is a game in which the house takes on all comers, pays all winners, and collects from all losers. Class II gaming is subject to tribal regulatory jurisdiction, with extensive oversight of the NIGC.

Class III gaming refers to all other forms of gaming other than Class I or Class II gaming, specifically including slot machines of any kind, and electronic or electromechanical facsimiles of games of chance. Class III gaming is lawful on Indian lands only if: (i) the gaming activities have been authorized by a tribal ordinance approved by the chairperson of the NIGC; (ii) such activities are permitted by the state; and (iii) the gaming activities

are conducted in conformance with a tribal-state compact. The compact negotiated between the tribe and the state must be approved by the Secretary of the Interior.

Tribal Regulatory Responsibilities

Under IGRA and the regulations of the NIGC, tribal governments are responsible for the regulation of gaming activities conducted on Indian lands, whether gaming is conducted and managed by the tribe itself or operated by others on behalf of the tribe under a management contract.

The separation of the regulation and the operation of tribal gaming activities is essential for effective regulatory oversight. If a tribe has contracted for the management of gaming operations, the management entity is responsible for the operation of gaming in compliance with all tribal gaming ordinances and regulations; however, the tribal government retains the responsibility for establishing such ordinances and regulations and for monitoring compliance with them. If a tribe manages its own gaming operations, the tribe's governmental structure must be organized to segregate the operation of gaming from its regulation.

Under IGRA, the tribal gaming ordinance is the document that, once established by tribal ordinance and approved by the NIGC, allows gaming to be conducted on tribal lands. Through May 15, 1995, approximately 165 tribal gaming ordinances have been submitted to and approved by the NIGC.

Establishing a Tribal Gaming Commission

Although not specifically required by IGRA or the NIGC, the creation of a tribal gaming commission is a method used by many tribes to implement the regulatory responsibilities of the tribes under IGRA. Most governments that have approved gaming have established a comprehensive regulatory environment, including active regulation through the use of gaming commissions.

The tribal gaming ordinance should outline the organizational and operational issues relating to the establishment of a tribal gaming commission. A tribal gaming commission is appointed by the tribal council, and may include both members of the tribe as well as non-tribal members who are experienced in gaming regulation or operations. The NIGC has published certain bulletins and other information that can be used by a tribal gaming commission to meet its responsibilities. Such resources include: NIGC Bulletin 93-1, "Model Tribal Gaming Ordinance"; NIGC Bulletin 94-3, "Functions of a Tribal Gaming Commission"; NIGC Bulletin 94-4, "Tribal Background Investigations, Suitability Determinations, and Licensing of Key Employees and Primary Management Officials" and other guidance.

Audit Requirements of the NIGC

One of the recommended duties of a tribal gaming commission, as outlined in NIGC Bulletin 94-3, is to "obtain annual independent outside audits and submit these audits to the NIGC." This Bulletin also states that the scope of these audits "should include all gaming related contracts that result in purchases of supplies, services or concessions for more than \$25,000."

The IGRA and related federal statutes and regulations specify the audit requirements for Indian tribes conducting gaming operations on tribal lands. Each tribe shall engage a certified public accountant to perform an audit of the financial

statements of the gaming operation.

The audit must be conducted in accordance with generally accepted auditing standards. If the tribe's financial statements are required to be audited to meet other regulatory requirements, such as single audits under OMB Circular

...tribal governments are responsible for the regulation of gaming activities conducted on Indian lands, whether gaming is conducted and managed by the tribe itself or operated by others on behalf of the tribe under a management contract.

A128 for tribes receiving certain levels of federal financial assistance, the audit of the tribe's gaming operation may be conducted in conjunction with the other audit as long as the audit requirements of the NIGC are met. For example, the audited financial statements of a tribe's gaming operation may be reported as a separate enterprise fund in the audited general purpose financial statements of the tribe, with required gaming industry accounting policies and disclosures made in the notes to the general purpose financial statements.

A copy of the audited financial statements, along with the report of the independent auditor, and a copy of the independent auditor's letter to management regarding internal accounting controls over gaming operations must be submitted to the NIGC within 120 days after the gaming establishment's business year end.

The financial statements of the tribe's gaming operation must be prepared by the tribe in accordance with generally accepted accounting principles. Generally accepted accounting principles for gaming entities, including required financial statement format and footnote disclosures, are discussed in the American Institute of Certified Public Accountants Audit and Accounting Guide, *Audits of Casinos*.

The tribe is required to keep books of account or records, including inventory records of gaming supplies, sufficient to support the information in the financial statements. Such books and records are required to be retained and made available for inspection by the NIGC for no less than five years.

The tribe must also reconcile quarterly fee assessment reports submitted to the NIGC with the audited financial statements of its gaming operation. Such reconciliations are to be made available upon request of representatives of the NIGC.

Management's Responsibilities

One of the greatest myths surrounding the process of auditing financial statements is that the external auditors are responsible for the timely preparation of accurate annual financial statements. As indicated in the first paragraph of the standard independent auditors' opinion, "financial statements are the responsibility of the Company's management." The responsibility of the external auditors is to express an opinion on the financial statements based on their audits. Therefore, tribal government, and in particular the tribal gaming commission, must ensure that proper accounting systems and personnel are in place in the gaming operation to allow for the timely preparation of accurate financial statements, not only at year end, but also monthly to allow for proper financial management of gaming operations.

IGRA and NIGC regulations require that in the event a management contract is entered into by the tribe, the management contract must include a provision requiring the "maintenance of adequate accounting procedures and the preparation of verifiable financial reports on a monthly basis."

Management is also responsible for establishing and maintaining the internal control structure over gaming operations. Written internal control procedures should be established over gaming revenues and expenses. Certain states have adopted minimum internal control standards (MICS) after the Nevada model, and have required compliance with the MICS as part of the negotiation of compacts to allow tribal gaming. The Nevada MICS and the MICS adopted by other states should be used as guides by tribal management in developing a written system of internal accounting controls over gaming operations.

In an effort to demonstrate a commitment to responsible self-regulation, a joint task force of the National Indian Gaming Association (NIGA) and the National Congress of American Indians (NCAI) is working to establish a national set of MICS to be used by all tribes engaged in Class II or Class III tribal gaming operations. As of May 31, 1995, a draft of the task force's proposed MICS was being circulated for comment.

External Auditors

Selection of external auditors for the gaming operations of a tribe should be made by the tribal council and ratified by the tribal gaming commission. Recommendations of external auditors by financial management of the gaming operation or by the management company are appropriate. Final selection of the auditors by the gaming commission is necessary to maintain the segregation of duties between the operation and regulation of gaming activities. Good working relations between financial management of the gaming operation and the external auditors is essen-

One of the myths surrounding tribal gaming is that gaming operations on Indian lands are essentially unregulated and therefore a magnet for organized crime and corruption.

tial for a smooth, efficient audit of the financial statements. However, the client of the external auditors is the tribal government, not the finance department or management company of the gaming facility.

The tribal gaming commission, or its equivalent, therefore, may serve as an audit committee with respect to the audit of the financial statements of the gaming facility, and as such should meet periodically with external auditors to communicate concerns and gain an understanding of the audit process. A formal exit conference at the end of the annual financial statement audit should be held with the gaming commission and the external auditors to review the financial statements and the management letter regarding internal accounting controls. Financial management of the gaming facility may be present for this exit conference, but may be excused for part of the meeting to allow for open discussion with the external auditors regarding performance of financial personnel.

Fee and contract arrangements with external auditors should receive final approval by the tribal gaming commission. The commission should ensure that an engagement letter outlining the scope of auditing services, reports to be rendered, timetable for completion of services, and professional fees is executed with the external auditors. The commission should also select an external auditing firm that is experienced in auditing gaming operations.

Internal Auditors

Tribal governments may also utilize the services of internal auditors to assist in the regulation and audit of gaming operations. Such internal auditors or internal audit departments may be assigned full time to gaming operations or assigned gaming responsibilities in addition to assignments on other tribal activities. Such internal auditors must be qualified with an understanding of gaming activities, and must be independent with respect to management of the gaming facility.

To be independent, the internal auditors must report directly to the tribal gaming commission or the tribal council, and not be a part of or report to the accounting department or management of the gaming facility. The internal auditors should not be a part of the accounting department of the tribe. The workplan of the internal auditors for gaming activities should be approved in advance by the tribal gaming commission, and should be directed toward sensitive internal control areas or other areas of concern to tribal management. The internal auditors should report to the commission frequently in regularly scheduled audit committee meetings to review progress on the annual workplan and to report findings, including internal control exceptions.

If the size of the gaming operation does not cost justify the hiring of a full-time internal auditor or internal audit staff, and the tribe does not have internal auditors trained sufficiently in gaming, internal audit services may also be contracted for on an hourly basis from independent certified public accountants. These outside CPAs may or may not also be the external auditors for the tribe's gaming operation.

Conclusion

One of the myths surrounding tribal gaming is that gaming operations on Indian lands are essentially unregulated and therefore a magnet for organized crime and corruption. Even before IGRA created a federal framework for regulating certain forms of tribal gaming, many tribes themselves successfully regulated reservation gaming activities. Before tribal gaming, there had been limited public or private sector economic development on reservations. Most tribes, as sovereign governmental agencies, have appeared to be vigilant in protecting the reputation of gaming projects they rely upon to feed, clothe, educate and employ their constituency. Therefore, tribal leadership has come to understand that comprehensive regulation, including the audit process, is a necessary component in the system of checks and balances needed to ensure the integrity of the games and to protect the interest of the tribe.

Sources of Information

Indian Gaming Regulatory Act, Title 25 U.S. Code
Code of Federal Regulations, Title 25
National Indian Gaming Commission Bulletins
American Institute of Certified Public Accountants Audit and Accounting Guide,
Audits of Casinos
Speaking the Truth, published by the National Indian Gaming Association
Statements on Auditing Standards of the American Institute of Certified Public Accountants