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MEMORANDUM

January 3, 2017

TO: Tribal Tax Policy Clients

FROM: Joe Webster /s/ and Michael Willis /s/

RE: *Tax Policy Developments*

IRS Publishes Final Regulations on the Reporting of Gaming Winnings

Last week, the Internal Revenue Service (IRS) published final regulations on the reporting of winnings from bingo, keno, and slot Machines. *See* 81 Fed. Reg. 96374 (Dec. 30, 2016) (attached). As we discuss below, the final regulations did *not* adopt several of the reporting requirements that tribal governments and the gaming industry identified as overly-burdensome, such as the proposed lower threshold for reporting slot winnings and electronic player tracking.

These new regulations implement Section 6041 of the Internal Revenue Code and, effective December 30, 2016, have replaced the information reporting requirements under § 7.6041-1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings. The new requirements will be codified in a new § 1.6041-10 of the regulations. The preamble to the regulations points out that pari-mutuel gambling winnings are addressed in a separate rulemaking process.

The regulations finalize a rulemaking process that began in March 2015, when the IRS published a proposed rule and requested comments on new substantive and technical provisions to its regulations on gaming reporting requirements. The notice also requested comments on the potential impact of reducing the thresholds requiring a W-2G form for reporting winnings. Our firm prepared and submitted comments on behalf of several of our tribal clients and reported in June 2015 on the tribal consultation and public hearing associated with this regulatory process.

Tribal written comments and points raised during the consultation teleconference expressed concern about the number of additional transactions requiring reporting under the proposed threshold and the resulting costs of the extra staff that would be needed to fulfill that responsibility. Tribes strongly objected to the IRS proposed use of electronic player loyalty cards for tax tracking and reporting. Tribal comments also pointed out that the IRS' proposed aggregate reporting requirements were inconsistent with the

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technologies in place for tracking winnings in tribal gaming systems. The commercial (non-Indian) gaming industry also highlighted these concerns in written comments and at the public hearing. More than 14,000 public comments were received by the IRS.

The final regulations incorporate changes from the proposed rule that reflect these tribal and commercial gaming industry concerns. We briefly describe these provisions of the final regulations below.

Reporting Thresholds. The final regulations do *not* adopt a lower reporting threshold for gaming winnings. Instead, the final regulations maintain the previous reporting thresholds (winnings of \$1,200 or more from bingo and slot machine play and winnings of \$1,500 or more from keno).

Electronically Tracked Slot Machine Play. The final regulations abandon the idea of creating rules for electronically tracked slot machine play (through the use of a player reward card or similar system) to record the amount a specific individual wins and wagers on slot machine play. The IRS summarized the objections from tribal and casino industry commentators in explaining its decision not to pursue this form of tracking winnings.

Optional Aggregate Reporting Method. Under § 7.6041-1(a), reporting of gambling winnings is required each time a payor makes a payment that meets the reporting threshold. The optional aggregate reporting method allows a payor who makes more than one payment of reportable gambling winnings to the same payee from the same type of game within a 24-hour period to report the aggregate amount of such reportable gambling winnings on one Form W-2G (provided that certain recordkeeping requirements are met). The final regulations offer five examples of aggregate reporting methods for additional guidance.

As to aggregate reporting, the final regulations incorporate tribal and industry recommendations that the 24-hour period is based not simply on the calendar day but on the "gaming day" as defined by each gaming establishment, thereby allowing payors to use the same period for purposes of information reporting as for other regulatory purposes. The gaming establishment has flexibility to choose its own "information reporting period" based on either a calendar day or a gaming day, as long as that period is applied uniformly by the payor to all payees during the calendar year. If an establishment wants to change its "information reporting period" from gaming day to calendar day (or vice versa) it must implement the change beginning on January 1 and carry that method through the entire year. For the purpose of closing the annual tax reporting period, however, even establishments using gaming day reporting periods must end at 11:59 p.m. on the final day of the year, December 31. For additional guidance, the regulations provide four examples as to how the information reporting period is administered.

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Payee Identification Requirements. The proposed regulations retain the rule in § 7.6041–1(c)(3) of the Temporary Income Tax Regulations that the payor must obtain two forms of identification from the payee to verify the payee's identity. However, § 1.6041–10(f) of the proposed regulations broadens the rules for acceptable identification to include W-9 forms. Additionally, in response to the comments, the list of examples of acceptable government-issued identification has been expanded in § 1.6041–10(e)(1) of the final regulations to include tribal member identification cards issued by a federally recognized Indian tribe. The regulations also contain special provisions that allow for the use of tribal identification cards that do not contain a photograph of the payee.

Conclusion

We will continue to monitor tax developments on your behalf. Please contact us if you have any comments or questions.