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# The MICHIGAN GAMING Newsletter



## MICHIGAN GAMING CONTROL BOARD RELEASES DETROIT CASINO REVENUES FOR NOVEMBER 2011

The Michigan Gaming Control Board (“MGCB” or “Board”) has released the November, 2011 total adjusted revenue figures for the three Detroit casinos – MGM Grand Detroit Casino, MotorCity Casino and Greektown Casino. Overall, aggregate revenue for the Detroit Market was up by 3.3% from the same reporting period last year. Specifically, revenue for MGM Grand Detroit Casino, MotorCity Casino and Greektown Casino was up by 2.7% to \$49 million, 1.5% to \$37.7 million, and 7% to \$28.4 million respectively in comparison to the same month last year.

Month in 2011	Total Adjusted Revenue 2011		
	MGM Grand Detroit	MotorCity Casino	Greektown Casino
	Total Adjusted Revenue	Total Adjusted Revenue	Total Adjusted Revenue
January	\$48,709,927.15	\$38,680,985.61	\$27,673,308.06
February	\$46,916,833.57	\$38,591,311.83	\$28,992,514.21
March	\$54,466,307.80	\$45,244,701.71	\$33,101,456.98
April	\$52,162,289.78	\$41,512,570.85	\$31,657,354.70
May	\$51,196,720.20	\$38,800,817.32	\$30,042,825.97
June	\$47,531,731.66	\$36,826,112.83	\$28,949,876.41
July	\$50,966,222.78	\$40,090,240.13	\$29,050,954.03
August	\$49,579,309.45	\$38,037,787.80	\$27,470,288.34
September	\$48,562,691.89	\$38,406,374.92	\$26,863,130.17
October	\$48,333,490.57	\$37,656,236.01	\$29,539,400.92
November	\$49,018,163.26	\$37,691,579.66	\$28,400,063.81
<b>Total</b>	<b>\$547,443,688.11</b>	<b>\$431,538,718.67</b>	<b>\$321,741,173.60</b>

Month in 2011	Total Adjusted Revenue 2011		
	All Detroit Casinos		
	Total Adjusted Gross Receipts	Total State Wagering Tax	Total Detroit Wagering Tax
January	\$115,064,220.82	\$9,320,201.89	\$12,542,000.07
February	\$114,500,659.61	\$9,274,553.43	\$12,480,571.90
March	\$132,812,466.49	\$10,757,809.79	\$14,476,558.85
April	\$125,332,215.33	\$10,151,909.44	\$13,661,211.47
May	\$120,040,363.49	\$9,723,269.44	\$13,084,399.62
June	\$113,307,720.90	\$9,177,925.39	\$12,350,541.58
July	\$120,107,416.94	\$9,728,700.77	\$13,091,708.45
August	\$115,087,385.59	\$9,322,078.23	\$12,544,525.03
September	\$113,832,196.98	\$9,220,407.96	\$12,407,709.47
October	\$115,529,127.50	\$9,357,859.33	\$12,592,674.90
November	\$115,109,806.73	\$9,323,894.35	\$12,546,968.93
<b>Total</b>	<b>\$1,300,723,580.38</b>	<b>\$105,358,610.01</b>	<b>\$141,778,870.26</b>

All three casinos are subject to a wagering tax of 19%, with 10.9% of this levy to go to the City of Detroit, and 8.1% to be paid to the State of Michigan.

The figures released by the Michigan Gaming Control Board are the gross receipts less winnings paid to wagerers. The figures do not include: 1) any fees or other relevant city, state or federal taxes; 2) wages and benefits paid to casino employees; 3) payments to suppliers, service providers or vendors; and 4) other normal business expenses.

## MICHIGAN GAMING CONTROL BOARD HONORS BARBARA ROM FOR HER SERVICE

Attorney Barbara Rom announced her retirement from the Michigan Gaming Control Board (“MGCB”) effective December 31, 2011. Ms. Rom has served on the MGCB since 2004, and has acted as the Chairperson since 2009. During this time period, the MGCB dealt with a number of challenging and time consuming issues. Under Michigan law, service on the MGCB is done on a voluntary basis, and members of the Board do not receive any remuneration. Thus, they perform a very significant public service.

On Tuesday, December 13<sup>th</sup>, the MGCB adopted a resolution acknowledging and commending Barbara Rom for her service on the Board from 2004 through 2011. The Resolution noted that she served with honor and distinction during her tenure and further stated the following:

It is with great respect for her professional and personal commitment to our state and its legal structure that we honor and thank Barbara Rom for her service to the State of Michigan. Her devotion to duty ensures that the Detroit casino gaming activities and operations are conducted in a lawful manner thereby protecting the best interests of the people of the State of Michigan. As the people of the state of Michigan acknowledge her excellent service and outstanding contributions to the proper implementation and regulation of legalized casino gaming in the city of Detroit, we add our sentiments of gratitude for a

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job well-done.

Informally, at the Board meeting adopting the Resolution, Ms. Rom's fellow Board members further commended her for the long hours she put in dealing with the numerous complicated issues that the MGCB faced during her tenure. Executive Director Rick Kalm also thanked Ms. Rom for her dedication and service, and presented her with a badge to honor her.

Ms. Rom stated that she was completely enriched by the experience of being on the Board. She noted that the members of the MGCB staff are amazingly dedicated people, and that everyone does their best at analyzing issues. She stated that the MGCB and its staff have shown that they are sensitive to industry concerns, as well as regulatory concerns. As a final comment, she noted that she hopes that the legislature does not over burden the industry with taxes, as the casino makes significant contributions to the community.

The five members of the MGCB are appointed by the Governor. The next meeting of the MGCB is scheduled to take place in February of next year. In addition to Ms. Rom's departure, Judge Benjamin Friedman's term expires at the end of the year. A quorum of three or four members (depending on the issue involved) is necessary for the MGCB to take action. Thus, some new appointments or reappointments are likely to occur in the near future by the Governor.

## **FEDERAL GOVERNMENT APPROVES OFF-RESERVATION KEWEENAW CASINO MOVE**

On Tuesday, December 20, 2011, the Department of the Interior announced that Assistant Secretary of Indian Affairs, Larry Echo Hawk, had approved the Keweenaw Bay Indian Community's ("Tribe") proposal to move its existing tribal casino. The proposal would move the tribal casino from its existing site to an off-reservation location approximately eighteen miles closer to the Tribe's reservation land.

The Tribe currently operates the Ojibwa Casino Resort in Baraga and the Ojibwa II Casino in Marquette, both located in Michigan's Upper

Peninsula. The current proposal involved moving the Ojibwa II Casino from its current location to an 80-acre site located at the former Marquette County Airport. The Tribe initially submitted its proposal to move the Ojibwa II Casino in 2006.

Under the Indian Gaming Regulatory Act ("IGRA"), the federal law that governs tribal gaming, tribes may only conduct casino-style gaming on "Indian lands," which include reservation land and lands that are held in trust by the federal government on behalf of the tribe. The new site is not located on the Tribe's existing reservation and, therefore, would be taken into trust by the Secretary of the Interior before gaming can be conducted. Under IGRA, tribes are prohibited from conducting gaming on lands acquired after 1988 unless the tribe meets one of the narrow exceptions to the law. According to the Secretary's report, the Tribe qualified for the "best interest" exception, allowing for gaming to be conducted on newly acquired lands if the proposed location and the Tribe meet several criteria that confirm that gaming at a new location is in the best interest of the Tribe and does not detrimentally affect the local community.

Despite receiving federal approval, the Governor of the state of Michigan must approve of the Secretary's determination before the land can be placed into trust. If the Governor does not approve, then gaming cannot be conducted on the new site, and the land will not be placed into trust. According to federal law, the Governor has one year from the Secretary's approval to make a decision regarding whether gaming can be conducted on the new site. According to a settlement agreement between the Tribe and the State of Michigan entered into in 2000, the Tribe must close its existing casino in Marquette County before opening a new casino facility at the new site.

Though the proposed site is not located on the Tribe's reservation, the Tribe currently exercises hunting and fishing rights in the area that have been established through treaties. In addition, the proposed site is located in a commercial district more amenable to a casino facility, compared to

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the casino's current site which is located in a primarily residential area. The local and county governments for the proposed site have expressed their support for the move, and the Department of the Interior did not receive any statements of opposition regarding the new location.

## **U.S. SUPREME COURT TO HEAR CASE REGARDING GUN LAKE CASINO**

On Monday, December 12, 2011, the Supreme Court of the United States granted the Secretary of the Interior and the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians' ("Tribe") petition for certiorari to hear arguments related to the Tribe's Gun Lake Casino site. The arguments are an appeal of two separate cases, consolidated for argument, that involve issues of sovereign immunity and standing.

The two cases, *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, and *Salazar v. Patchak*, revolve around issues of sovereign immunity and standing during the land-in-trust process used by the Secretary of the Interior to take land into trust by the federal government on behalf of a Native American tribe. The land-in-trust process is an important aspect of Native American gaming law that, in addition to other rights, allows a tribe to conduct Class III gaming activities on the land after receiving certain state approvals.

Specifically, the Supreme Court will hear arguments regarding whether a private individual is able to bring suit against the federal government resulting from a gaming operation conducted on trust lands. Circuit courts have been split on the issue, with the Seventh, Ninth, and Eleventh Circuits stating that the federal government is immune to all such suits under the Quiet Title Act while the D.C. Circuit has held that the government is immune only when a plaintiff claims title to the land. In addition, the Court will hear arguments related to whether federal law waives the federal government's sovereign immunity when a suit involves lands held in trust on behalf of a Native American tribe.

In the case at issue, the Plaintiff sought to

invalidate the Secretary of the Interior's decision to take the land into trust. His case was dismissed by the D.C. District Court in August 2009, but the decision was reversed and remanded by the D.C. Circuit Court in January of 2011.

Dates for the parties arguments to be heard by the Supreme Court have not been set, but are expected to be heard sometime in the Spring of 2012.

## **RMC LEGAL AND RESORT ADVANTAGE OFFER FREE EDUCATIONAL WINTER WEBINAR SERIES FOR FINCEN AND IRS REPORTING REQUIREMENTS**

On Thursday, December 8, 2011, Resort Advantage hosted the first of its multi-part educational webinar series that seeks to address critical FinCEN and IRS Reporting Requirements for the casino gaming industry. The webinar series was geared toward federal regulations and their respective application to the gaming industry in 2012 and beyond.

The webinar series will include industry experts from Convey Compliance, Dowling Advisory Group and Regulatory Management Counselors, P.C.

Series Part 1: "2012 FinCEN and IRS Reporting Requirements—What You Will Need!" focused on compliance reporting requirements for 2012 and how they will impact the regulatory procedures and controls within the following four areas: 1-Persons doing business at the property; 2-Forms management / electronic submission; 3-Staff regulatory knowledge; and 4-Reporting / auditing requirements. The seminar can be viewed online at the link provided at the end of this article.

Series Part 2: "Preparation For eFiling Transition" will be held in February, 2012 and will focus on a transition process perspective for companies to meet the 2012 FinCEN and IRS electronic filing

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objectives. During this webinar, a panel of industry experts will be on hand to share real-world experiences with properties that have completed the transition to the new electronic filing process. They will provide best practices on how to perform a smooth transition as well as provide a sample transition plan to assist in a property's compliance, audit and IT staff.

Series Part 2 will specifically focus on 1-Creating a detailed transition plan; 2-Technical considerations; 3-Working with FinCEN and IRS; and 4-Deadline dates revisited. A date and time for the Series Part 2 event is yet to be determined. *The Michigan Gaming Newsletter* will provide these details as they become available.

Persons who should consider attending the webinar Series include casino operators, compliance managers and directors, accountants, regulators and lawyers.

To register for the free online Webinar Series, or to view the December 8<sup>th</sup> presentation, please visit: <http://resort-advantage.com/events-news/events-webinars/2012-winter-webinar-series-part-1.html>