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The **MICHIGAN GAMING** Newsletter



DETROIT MAYOR PROPOSES INCREASE IN CASINO TAX FOR DETROIT'S CASINOS

On Tuesday, April 12, 2011, Detroit Mayor Dave Bing presented his 2011-2012 budget proposal for the city of Detroit, which among other items, includes a one-year, 3% increase in Detroit's city tax on casino wagering. Mayor Bing claims that the temporary tax increase would provide the city with an additional \$20 million in revenue.

In response to Mayor Bing's proposal, the three Detroit casino operators from MGM Grand Detroit, MotorCity Casino, and Greektown Casino released a collective statement and noted that they "are united in disappointment at being singled out for a tax increase. Detroit's gaming industry is already the highest taxed industry in the state. It has made enormous commitments in capital investment and job creation and has paid billions of dollars in vital tax revenues for the City of Detroit and the State of Michigan."

"This proposal couldn't come at a worse time. Detroit's local businesses must remain competitive as casinos open in Ohio and there is constant pressure to expand gaming elsewhere in Michigan," read the statement. "Limiting our ability to reinvest may result in the City losing far more than anything gained by the proposed increased rate."

In response to Mayor Bing's proposal, Detroit's casino operators also noted that, "Detroit casinos are paying much more than land-based casinos in other major gaming jurisdictions. The Nevada gaming tax rate is 6.75%; New Jersey's rate is 9.25%; Mississippi's rate is 11.2%. States imposing higher tax rates typically are markets where initial investments are much lower. For example, the casino currently under construction in Toledo is expected to cost \$300 Million vs. Detroit's \$700 Million average per casino,

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and, unlike the Detroit casinos, the Toledo casino will not be subjected to commercial or tribal casino competition. We are currently paying an effective 24.5% gaming tax rate, taking into account the additional fees we must pay to the City and State.”

In addition, the Michigan Chamber of Commerce proclaimed its opposition to the tax increase in a statement released on Tuesday, April 19, 2011, “Detroit's three casino operators have made a substantial financial commitment to the city, investing millions of dollars in first-class facilities and creating thousands of good jobs for hard-working city residents,” said **Rich Studley**, President & CEO of the Michigan Chamber of Commerce. “Now is not the time to impose a multi-million dollar tax penalty on these critically important job providers.” The statement also noted that the three Detroit casinos pay one of the heaviest tax rates in Michigan.

In a recent interview with *The Michigan Gaming Newsletter* **Michael Pollack**, Managing Director of New Jersey-based Spectrum Gaming Group noted that “[g]aming operators --- more so than most businesses – are highly sensitive to changes in tax rates, in part because taxes are assessed on gross revenue and must be paid whether or not the operations are profitable. Another reason for such sensitivity is that the capital markets are highly tuned to changes in tax rates. We have seen examples of how even slight shifts in taxes can have profound effects on the cost of capital for gaming operators. In 2003, for example, the New Jersey governor floated a trial balloon that he wanted gaming taxes to rise from 8 percent to 10 percent. On the same day that the tax increases were announced, the market value of gaming companies with assets in Atlantic City dropped by more than \$500 million collectively. The next day, the stocks lost another \$290 million in value.”

According to **Andrew Smith**, Director of Research for the American Gaming Association, “[i]f the people of Detroit are truly interested in seeing the impact tax hikes can have on the commercial casino industry, they needn’t look too far away. Elected officials in Illinois raised taxes on riverboats in their state several years ago, and not only were these businesses, their employees and their customers negatively impacted by this poor public policy decision, but in the end, the state lost out as well because annual tax receipts actually fell rather

than going up. It is a very good example of the law of unintended consequences.”

Roger Gros, Publisher of *Global Gaming Business* magazine, was also interviewed by The Michigan Gaming Newsletter, and noted the importance of a moderate casino tax rate for states, “[t]he most successful gaming jurisdictions in the world are those with the lowest tax rates. Nevada, Mississippi and New Jersey have encouraged billions of dollars in investment because the casino owners can expect a reasonable return on investment. And in return, the state gets more jobs, non-gaming tourist attractions, business generation via meetings and conventions, and in the end, more tax revenue that even a higher rate would generate.”

Mr. Gros also noted that, “[r]aising tax rates is almost always counter-productive. To make up for the lost revenue, casinos must reduce the reinvestment in their properties and in their players, causing less visitation, lower revenues and eventual job reductions. In the beginning, the Michigan legislature created an innovative and reasonable tax rate for the Detroit casinos. They have delivered what they promised in terms of jobs, hotel rooms and suites, non-gaming amenities and tourism attractions. A tax increase would blunt if not eliminate some of those benefits received today by Detroit residents and city government.”

JUDGE’S ORDER KEEPS BAY MILLS CASINO CLOSED

On Thursday, April 14, 2011, a federal judge for the Western District of Michigan issued an opinion and order denying the Bay Mills Indian Community (“Bay Mills”) request to reopen its Vanderbilt casino after the court ordered it be closed on March 29, 2011.

The order addresses Bay Mills’ arguments that it would be irreparably harmed by the closing of its Vanderbilt casino and that the forced closure is not in the public’s interest, including the loss of local jobs and revenue for the tribe. Specifically, the order states that “Bay Mills invites the general

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public to violate Michigan's prohibition on attending a gambling house" by operating an illegal casino and that, therefore, "the benefits enjoyed by the local community cannot be properly considered." Complaints in the lawsuit allege that, because the facility is allegedly not located on "Indian lands," the Bay Mills Tribe cannot conduct gaming activities at the Vanderbilt location.

Shortly after litigation began, the Little Traverse Bay Band of Odawa Indians filed a motion for a preliminary injunction to close the casino, which opened on November 3, 2010. The casino officially closed on March 29, 2011, hours after the preliminary injunction was granted by the court. There has been no further actions taken in the case since the motion to stay the injunction was denied.

FINCEN ASSESSES \$250,000 CIVIL MONEY PENALTY AGAINST MINNESOTA TRIBAL CASINO

Yesterday, the Financial Crimes Enforcement Network ("FinCEN") announced the assessment of a \$250,000 civil money penalty against the Lower Sioux Indian Community's Jackpot Junction Casino and Hotel located in Morton, Minnesota for alleged violations of the Bank Secrecy Act ("BSA") requirements for casinos. The casino consented to the payment without admitting or denying the allegations.

FinCEN indicated that the penalties were assessed for violations of the anti-money laundering program, and the reporting and record keeping requirements of the BSA. FinCEN alleged that the casino:

1. Failed to implement internal controls related to the gathering and recording of required information for BSA reporting;
2. Failed to conduct adequate independent testing and training for employees;
3. Failed to develop and implement effective procedures for the

preparation, review and filing of BSA reports resulting in multiple failures to timely and accurately file Currency Transaction Report by Casino Forms, and Suspicious Activity Report by Casinos Forms.

FinCEN Director James Freis, Jr. made the following statement in connection with the announcement:

"As with other recent penalty actions taken by FinCEN involving banks and money transmitters, today's casino action highlights the importance for all types of financial institutions to institute and maintain BSA compliance programs commensurate with their operations and risk."

David Waddell, attorney and President of Regulatory Management Counselors, P.C. ("RMC"), commented, "The recent action by FinCEN demonstrates that all casinos need to be aware of the very detailed anti-money laundering requirements that they are now subject to in order to avoid fines and penalties and to help prevent money laundering from occurring in their facilities. As outlined in the recent webinar series that RMC participated in, there are indications that FinCEN will be looking to assess an increasing number of casinos with penalties in an effort to communicate the need for compliance in these areas."

RMC, together with several industry partners, has put together a free webinar series on these topics that is available at the following link:

<http://www.resort-advantage.com/events-news/events-webinars/bsa-ofac-facta-series.html>

The FinCEN announcement together with a copy of the written Assessment is available at: http://www.fincen.gov/news_room/nr/html/20110421.html.