

**MEMORANDUM**

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**August 12, 2008**

**TO:** Local Taxing Authorities

**FROM:** Michelle Pardee, Paralegal, Communications & Legal Division

**RE:** Getting the Gambling Commission's Assistance When Licensees Fail to Pay Gambling Taxes

Hopefully the information below will answer some of your questions about what the Gambling Commission can do to assist your office when you have licensees who are delinquent in paying their gambling taxes. If you have additional questions, please contact me.

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**I. Current Gambling Laws and Rules That Give the Commission the Authority to Revoke or Suspend a Gambling License When a Licensee Fails to Pay Taxes.**

There is one law and one rule that give the Commission the authority to revoke or suspend a gambling license when a licensee fails to pay taxes. Which one we will use, and whether the city/county first needs a judgment, depends on when the taxes were originally due.

1. WAC 230-03-085 states the Commission may suspend or revoke a license when the licensee has demonstrated a willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level, or has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action.
2. RCW 9.46.075(4) states the Commission may suspend or revoke a license when the licensee has been convicted of, or pleaded guilty to, willful failure to make required payments to a governmental agency.

**II. Steps the Local Taxing Authority Should Take to Get Commission Staff's Assistance.**

1. Send me a copy of the last letter you sent the licensee regarding the delinquent taxes. This letter should state the total taxes due and for which quarters. I will then send the licensee a letter, putting them on notice that failure to pay required gambling taxes can jeopardize their gambling license. Your office will be copied on the letter, so you will know when it was sent to the licensee.

Note:

- a) Several taxing authorities have reported that licensees have paid their taxes after receiving these letters.
  - b) These letters are most effective if sent before the licensee has accrued a substantial debt to the city. Therefore, if you have a licensee that is a few quarters behind, feel free to notify me of this. (Although there is a threshold amount under which it is not cost effective for the Director to issue administrative charges against a licensee, we will send a letter in almost every case.)
2. If the licensee does not respond to my letter within a reasonable amount of time, notify me and I will send a follow-up letter.
- a) 3. If, after the second letter is sent, the licensee still does not respond, you will need to submit an affidavit ( sworn statement), stating:
    - The total gambling taxes due;
    - The time period(s) for which the taxes are due;
    - The collection efforts your office has made; and
    - The licensee's response to your efforts.

In your affidavit, you should formally request that the Commission revoke or suspend the business's license and include the following:

- b) A copy of the law or ordinance that authorizes the city to tax gambling activities.
- c) Copies of any citations or complaints the city may have already issued to the licensee for its failure to pay taxes.
- d) Copies of any police reports the city may have written regarding the delinquent taxes (In those cases where the city has already filed civil or criminal charges against the licensee, the city will likely have a police report or some other type of report).
- e) Information concerning whether the city has taken action against the licensee's business license. Commission staff has been told that this is an option for most cities because they typically issue the business a separate license.

### **III. What Happens After the City or County Submits This Information to Me.**

After the City or County submits the information described above to me, we will contact the licensee, and warn them of pending charges to revoke their license(s). We will encourage the licensee to immediately contact the city or county to make arrangements to bring their taxes current. If this is not successful, administrative charges will be prepared, and submitted to the Director.

### **IV. Criteria the Director Will Consider When Deciding Whether to Issue Charges.**

The primary criteria the Director will consider when deciding whether to issue administrative charges against a licensee will be the items in your affidavit.

The Director probably will not issue administrative charges under the following circumstances: 1) the

amount of gambling taxes due is relatively small (under \$3,000.00); 2) the licensee is only one quarter late; 3) the licensee has made some effort (not just promises) to pay the delinquent taxes; or 4) the licensee has paid the taxes due, but not the associated penalties and interest. Of course, there are exceptions to these generalities. Therefore, if your office is unsure whether a case is worth referring, you are welcome to call me.

#### **V. What Happens After Charges Are Issued.**

After the Director issues charges, the licensee has 20 days to request a hearing. After we receive the request for hearing, we will proceed with settlement negotiations. Pursuing a case to an administrative hearing costs the agency, on average, \$4,000.00. Therefore, in most cases, we will agree to defer revocation or suspension of the business' gambling license if the licensee will agree to a payment plan. Most cities also prefer this option because their goal is to collect the taxes.

However, if this is not an option, we will proceed to an administrative hearing. At the hearing, we will be asking the Administrative Law Judge (ALJ) to revoke or suspend the business's gambling license(s). ALJ's usually issue their Initial Orders 45 to 60 days after the hearing. The licensee then has 20 days to submit a petition for review (an appeal) to the Commissioners. Appeals before the Commissioners usually take an additional 120 days. Although licensees may appeal the Commission's Final Order to Superior Court, most licensees do not choose to do this.

#### **VI. What Is Commission Staff's General Response When a Licensee Has a Dispute With the Taxing Authority Regarding Whether Gambling Taxes Are Due.**

On occasion, licensees call and explain that they have a dispute with the city over their gambling taxes. Commission staff will usually tell the licensee that these disputes are between them and their taxing authority; therefore, the Commission will not get involved.

However, if the licensee has a genuine dispute with the city/county regarding their gambling taxes, the Director would consider this factor when deciding whether to issue administrative charges against the licensee for failure to pay taxes. For example, a few cities and counties recently found that they have licensees in their jurisdictions, of which they were not previously aware, who should have been paying gambling taxes. In some cases, the taxing authorities are now asserting the licensees owe back taxes, penalties, and interest. We would consider this a genuine dispute. Furthermore, the Director would probably only take administrative action if the licensee was delinquent with taxes that were due after the time that it was notified that the city or county had a gambling tax.