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MEMORANDUM

DATE: January 29, 1998

TO: ALL NONRESTRICTED GAMING LICENSEES AND OTHER INTERESTED PERSONS

FROM: WILLIAM A. BIBLE, CHAIRMAN
GAMING CONTROL BOARD

SUBJECT: LEGISLATIVE ACTION AFFECTING CASINO PROMOTIONAL ITEMS

With the enactment of Assembly Bill (AB) 419 by the 1997 Nevada Legislature, significant changes must be made regarding the gross gaming revenue tax handling of casino promotional items. In response to numerous licensee requests for clarification of AB 419 as it relates to promotional items, the Board has prepared this informational industry letter with accompanying examples of the more common types of promotional items. This information is intended to provide general guidance as to the proper accounting treatment of casino promotional items.

Particularly noteworthy are Sections 3, 4 and 9 of AB 419, which are excerpted as follows:

Sec.3. "Representative of value" means any instrumentality used by a patron in a game whether or not the instrumentality may be redeemed for cash.

Sec.4. "Wager" means a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.

Sec.9. NRS 463.0161 is hereby amended to read as follows:

463.0161 1. "Gross revenue" means the total of all: ...

2. The term does not include:

- (a) Counterfeit facsimiles of money, chips, tokens, wagering instruments or wagering credits;
- (b) Coins of other countries which are received in gaming devices;
- (c) Any portion of the face value of any chip, token or other representative of value won by a licensee from a patron for which the licensee can demonstrate that it or its affiliate has not received cash;

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- (d) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed;
- (e) Cash received as entry fees for contests or tournaments in which patrons compete for prizes, except for a contest or tournament conducted in conjunction with an inter-casino linked system; [or]
- (f) Uncollected baccarat commissions [.] or
- (g) Cash provided by the licensee to a patron and subsequently won by the licensee for which the licensee can demonstrate that it or its affiliate has not been reimbursed.

Background

During the 1995 legislative session, NRS 463.0161(2)(c) was enacted (via Senate Bill 399) allowing licensees to exclude from gross gaming revenue the face value of any chips, tokens or representatives of value won from the patron for which the licensee did not receive cash. However, neither the bill nor existing statutes at the time addressed whether payouts resulting from such wagers were deductible when computing gross gaming revenue. However, the 1997 Legislature addressed this issue by amending a pending measure, AB 419, following testimony from the Nevada Resort Association.

Generally, the effect of sections 3 and 4 of AB 419 are two-fold:

1. Patrons no longer must risk any of their own funds for a wager to exist. If a licensee wins a wager but does not win any of the patron's funds in the process, gross revenue is unaffected by this wagering transaction.
2. Since patrons are no longer required to risk any of their own funds for a wager to exist, licensees may deduct all payouts made as a result of winning wagers, even if the patron wagers free "lucky bucks", nonnegotiable chips or tokens given away free-of-charge by the licensee, or any representative of value that has no cash redemption value.

Section 9 of AB 419 added paragraph 2(g) to NRS 463.0161 to provide that cash given away by a licensee to a patron and subsequently won back will no longer be subject to gross revenue fees if the licensee can definitively show via an audit trail that the cash winnings were the direct result of the cash initially given away.

Effective Date

AB 419 Sections 3, 4 and 9 of AB 419 became effective on October 1, 1997. The provisions of SB 399 amending NRS 463.0161(2)(c) became effective on June 19, 1995.

Refunds

A licensee may submit a Claim for Refund for periods after September 1, 1997 (tax return filed October 24, 1997) to the Nevada Gaming Commission pursuant to Regulation 6.180 for overpayment of gross gaming revenue fees due to these changes in tax and accounting treatment for promotional items. Adequate supporting documentation must be provided to support any such requests. Be advised that, pursuant to NRS 463.387(5), the Commission may deny or limit the payment of interest for any claimant that has failed to file a claim for refund related to this matter within 90 days of the date of this letter.

In addition, if a licensee believes that the passage of SB 399 in the 1995 legislature created the legal basis for this tax treatment of promotional items, they may desire to extend their Claim for Refund to apply retroactively to May 1, 1995 (tax return due June 24, 1995). Final determination as to the appropriate effective date for granting refunds will be determined by the Nevada Gaming Commission pursuant to the provisions of the Gaming Control Act (NRS 463).

Prospective Recordkeeping Requirements

In order to determine that all free play and promotional items have been properly accounted for, and to enable the Gaming Control Board to track the fiscal impact of free play and promotional items and inform the 1999 Nevada Legislature of the results, the following record keeping requirements are being required of all nonrestricted Group I, II and III licensees beginning February 1, 1998 pursuant to Regulation 6.040:

1. To substantiate the deduction of payouts resulting from wagers made with nonnegotiable chips/tokens or other nonnegotiable representatives of value, a daily record of the total number and dollar value of the nonnegotiable chips, tokens or representatives of value wagered must be prepared and signed by either two count team members or two individuals responsible for taking the table inventory.
2. To substantiate the deduction of payouts resulting from wagers made with negotiable chips, tokens, U.S. legal tender, or other negotiable representatives of value given away by the licensee, and to avoid payment of taxes on these items, an additional step is required:

Each licensee is responsible for devising a tracking method that distinguishes these wagering instrumentalities from negotiable chips, tokens, U.S. legal tender, or other negotiable representatives of value that were not given away by the licensee. Such instrumentalities can be of a different color, design or be otherwise marked in a manner that clearly distinguishes them from other wagering instrumentalities. Once this step is accomplished, the record keeping requirements described in #1 apply.

3. For promotions where the patron is required to present an item, such as a coupon, at a gaming table in "exchange" for negotiable chips, unless the negotiable chips can be separately identified and tracked when wagered, the resulting table games play will be taxed in the same manner as normal table games play.

Additionally, in any situation where a coupon is exchanged for negotiable chips from the table tray, the appearance of the coupon "exchanged" in the drop box would not be acceptable proof of wagering. On the contrary, the dollar value of chips given away during the exchange, (as supported by the coupon appearing in the drop box) must be added to table games win to restore the table top inventory, which was reduced when the patron merely "exchanged" the coupon for negotiable chips.

4. To substantiate the deduction of payouts resulting from wagers made with slot machine wagering credits that were given to a patron for reasons other than the winning of a jackpot, the slot monitoring system must be able to separately track these credits as they are wagered.

If not tracked, the presumption will be that the wagering credits were cashed out by the patron rather than being wagered. If this is the case, an adjustment must be made to add these wagering credits to slot win, in effect restoring the hopper which was reduced when the wagering credits were cashed out rather than wagered.

The preceding record keeping requirements are to be compiled monthly and be available to the Board upon request. This information must be maintained in a retrievable manner for a period of five years.

Approval of Chips, Tokens and other Instrumentalities

NRS 463.307 requires that: "All wagering must be conducted with chips, tokens, wagering instruments or other instrumentalities approved by the board, or with wagering credits or the legal tender of the United States." Additionally, **Regulation 12: Chips and Tokens** requires Board approval for negotiable and nonnegotiable chips and tokens, as well as other instrumentalities (e.g., scrip, vouchers, coupons, etc.) that are wagered.

Applicability

Considering these changes, as well as the large number and variety of promotional items currently in use throughout the Nevada gaming industry, it is anticipated that questions as to the proper accounting treatment for promotional items will continue to arise. Therefore, included as an attachment to this letter is a general overview of a number of the more common types of promotional items, accompanied by a discussion of the Board's advice as to the appropriate accounting treatment under the new laws. As this list may not cover all situations, you are urged to contact the Gaming Control Board's Audit Division should questions as to the proper accounting treatment for a particular promotional item or event arise.

Attachment

WAB/JE:lg

cc: Steve DuCharme
C. Brian Harris

NEVADA GAMING CONTROL BOARD
ATTACHMENT - TAX TREATMENT OF PROMOTIONAL ITEMS

<u>Description</u>	<u>Tax Treatment</u>		<u>Examples</u>
	Amount to Include in Drop	Deduct Payouts?	
<p>4. Wagering Credits awarded on a slot machine or on a slot club card for reasons other than payouts on a winning wager are not deductible as payouts at the time they are awarded. However, when these credits are wagered instead of cashed out, the following conditions apply:</p> <ul style="list-style-type: none"> • Must be tracked separately from wagers made with wagering credits that were awarded as payouts on winning wagers, and • Must be wagered (If patron has the option of playing these wagering credits or cashing them out, the licensee must be able to distinguish between wagering credits wagered and those that are cashed out). 	See Description, Examples	Yes	<p>Slot Club Specials: Slot players are awarded wagering credits based on some criteria other than a winning wager (e.g., joining the slot club, playing on your birthday, accumulating coin-in). When wagered, the slot monitoring system records these wagering credits separately from the regular wagering credits. Include \$0 in drop and deduct all payouts. (Note that this accounting treatment does not require an adjustment.)</p> <p>Special Note:</p> <p>Assume the same facts as in the example above, however, the licensee cannot distinguish between wagering credits wagered and wagering credits that were cashed out. In this case, all such wagering credits will be assumed to have been cashed out. An adjustment must be made to add these wagering credits to slot win to restore the hopper, which was reduced when the wagering credits were cashed out instead of being wagered.</p>

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ATTACHMENT - TAX TREATMENT OF PROMOTIONAL ITEMS

<u>Description</u>	<u>Tax Treatment</u>		<u>Examples</u>
	Amount to Include in Drop	Deduct Payouts?	
<p>5. Bonus Payouts: The initial payout must be based on a winning wager. However, a secondary criteria or event determines the amount of the bonus payout. In such cases, the secondary criteria or event may include, but is not limited to, the following:</p> <ul style="list-style-type: none"> • Achievement of a specified winning combination • Achievement of a winning combination in a specified order • Achievement of a specified number or type of winning combinations (often, the faster this is accomplished the greater the payout) <p>Special Note:</p> <p>This Tax Treatment does not apply when the secondary event is a drawing or a contest (see Example #7 below).</p>	Amount of initial wager	Yes	<ul style="list-style-type: none"> ◆ 4-of-a-kind in aces on Fridays pays double ◆ 4-of-a-kind in each of the 13 possibilities (2's through aces) pays \$100 bonus ◆ Scratch-off tickets or pull tabs given to patron for each jackpot over \$100 - these items determine amount of bonus award (if any) ◆ Bonus wheel spin for winning jackpot over \$100 ◆ Double-time for two minutes each hour, all jackpots are doubled ◆ All poker machine royal flushes during December win a bonus hat or jacket
<p>6. Free nonnegotiable chips wagered by the patron, for which the licensee was subsequently reimbursed at full wagering value.</p>	Full wagering/ reimbursed value of chips wagered	Yes	<p>Chips provided to patrons by timeshare company: In exchange for listening to a timeshare presentation, the patron receives a coupon which can be exchanged for \$50 in nonnegotiable chips at any of several casinos. The chips are allowed to ride and are eventually dropped. The licensees bill the timeshare company for \$50 x the number of coupons presented. Include the nonnegotiable chips in drop at their wagering/reimbursed value and deduct all payouts.</p>
<p>7. Promotional drawings where patrons are given tickets either free of charge or upon winning a wager. Drawings held periodically to award prizes.</p>	\$0	No	<p>Drawings are considered contests where patrons compete against one another for a prize or prizes. Contest payouts are not deductible per statutes.</p>

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Miscellaneous:

“Mystery Jackpots” - A random number generator periodically selects certain wagers to receive a mystery jackpot, even though the play may not result in the machine displaying a winning combination. The mystery bonus feature of the machine is clearly displayed for the patrons. Since the selection of the jackpot is made by the random number generator and is not determined by licensee personnel, such jackpots are fully deductible. If the licensee selects the wager that will be awarded a mystery jackpot, the jackpots are not deductible.

General Notes - To qualify for the accounting treatments described in this attachment, the licensee must keep detailed records to prove that:

1. The promotion was conducted using chips, tokens, representatives of value or U.S. legal tender (a.k.a. “wagering instrumentalities”).
2. The wagering instrumentality was obtained for free or purchased at a discount.
3. The promotional event was held in conjunction with a licensed game or an approved gaming device. Promotions where the outcome is determined exclusively by a nonapproved device (e.g., a paycheck wheel or a promotional device pursuant to Regulation 14.210) should have no effect on gross revenue.
4. The instrument was wagered. Depending on how the promotion was structured, proof of wagering might be accomplished by such activities as the wagering instrumentality being dropped in the drop box, placed in the table tray, inserted into the slot machine, accepted for a wager at the writer’s station or accepted for a bingo card purchase. (See also #6 below)
5. Slot machine wagering credits awarded for reasons other than winning jackpots were subsequently wagered rather than cashed out. Please note, however, that unless the slot monitoring system can separately track these items as they are wagered, the wagering credits will be assumed to have been cashed out, and an adjustment must be made to slot win to restore the hopper for wagering credits cashed out.
6. A free coupon that was merely “exchanged” for an instrument that was subsequently wagered or converted to cash has no effect on gross revenue (e.g., exchanging a coupon for negotiable or nonnegotiable tokens at a slot club booth). Please note, however, that when the “exchange” takes place at a live revenue producing area, such as at a gaming table or a counter game, and the coupon is exchanged for negotiable chips, tokens or U.S. legal tender, the licensee must devise a method of accounting that ensures that gross revenue was **not** reduced improperly as a result of the “exchange”.
7. Special recordkeeping is maintained. See industry letter dated January 29, 1998 that accompanies this attachment for specific recordkeeping requirements.