



GLS Executive Committee's "Wish List" Of Suggested Revisions To NGC Regulations

As a number of the members of the Executive Committee of the Gaming Law Section are experienced gaming law practitioners, we, like many of you, wish some of the Nevada Gaming Commission's (NGC) regulations were amended to assist in their application and interpretation. Some regulations simply contain errors that over the years, have not been addressed. We note that NGC Regulations 15 and 16 have not been revised for many years. So, with the caveat that the following does not reflect the views or include the participation of all of the members of the Executive Committee (especially State Gaming Control Board ("GCB") Member Mark Clayton, who recused himself from any involvement in this exercise), here is a "wish list" of changes to the current NGC Regulations that some of us think should be considered. The list is by no means meant to be exhaustive, but it may generate some welcome dialogue.

- NGC Regs. 1.110 and 1.145. These regulations define "establishment" and "premises" to broadly include all land, buildings and improvements where business is conducted and are relied upon by the GCB to require licensees to assume the responsibility of certain business activities of tenants and other third parties. In particular, the GCB holds licensees responsible for the collection of live entertainment taxes due from the activities of tenants, even if the licensee has no control over the

live entertainment in question and has no access to sales records or other necessary documentation to pay the taxes. The Nevada Department of Taxation already handles the administration of sales and use taxes assessable against the same non-gaming tenants and therefore live entertainment taxes should not be an exception. Accordingly, these regulations should be amended to clarify that "establishment" and "premises" do not include leased portions of a gaming facility on which business is conducted by a third party that is not otherwise licensed to conduct gaming operations.

- NGC Reg. 3.100. This regulation needs to be expanded to address corporate level employees who do not work directly for the licensee. In addition, it is not clear how to report multi-property personnel at the licensee or subsidiary level (i.e., if an employee has the salary attribute, but works at two properties, do you split the salary or show it on the key employee reports for both properties?). Within the regulation, the "comp" level needs to be further defined as there are now more comped amenities other than food, room and beverage. Salary requirements (\$125,000 or top 10 salaries) for small properties drops the employees who must be reported down to first level supervisors. The GCB's internal job codes used in analyzing licensees' key employee reports need to be reviewed, updated and further clarified.

- NGC Reg. 5.011(8). In fairness and as a matter of consistency, this Regulation should be amended to specify that it pertains not just to the operations of a licensed gaming establishment, but also to the activities of other licensees who do not operate a gaming establishment, such as licensed manufacturers and distributors of gaming devices. Accordingly, this regulation should be amended as follows:

“8. Failure to comply with or make provision for compliance with all federal, state and local laws and regulations pertaining to the operations of a licensed establishment and the sale and/or distribution of gaming devices including, without limiting the generality of the foregoing, payment of all license fees, withholding any payroll taxes, liquor and entertainment taxes and antitrust and monopoly statutes.”

- NGC Reg. 5.180. This Regulation should be amended to either specifically provide for, or clarify that an exception exists, for approval for the operation of an inter-casino linked system (ILS) among affiliated licensees without outside participation. It is fairly burdensome to go through a formal ILS approval process to link systems between casinos owned by subsidiaries of the same gaming company.



- NGC Reg. 12.060. The Regulation should be amended to add language that specifies how chips and tokens can or cannot be given away in connection with souvenir programs or for display (e.g., drilling hole in chip or token, placing in acrylic, etc.).

- NGC Reg. 15 “Explanatory note:”. The reference therein to NRS 463.1594 should be changed and updated to NRS 463.1597.

- NGC Reg. 15.510.4-1. The word “ineffective” as used in the quoted language should be deleted and replaced with the word “void” pursuant to the Nevada Supreme Court's decision in *Folio v. Briggs*, 99 Nev. 30, 656 P.2d 842 (1983).

- NGC Reg. 15.585.7-1. The language needs to be revised to make it consistent with the provisions of Sections 13, 16, and 19 of A.B. 535 (2007), which amended NRS 463.505, 463.5665 and 463.57325 to allow holding and intermediate companies for entities that hold state gaming licenses to issue, sell, assign, transfer, pledge or otherwise dispose of options to purchase any security or other interest therein upon the administrative approval of the Chairman of the GCB, in lieu of requiring the prior approval of the NGC.

- NGC Reg. 15.585.7-5. The reference therein to NGC Regulations “16.410(b), (c), (d) or (e),” needs to be revised and updated to read “16.410 and 16.415.”

- NGC Reg. 15.624.1(sic). The heading of this Regulation, which is incorrect, needs to be corrected or revised to read “15.625.1.”

- NGC Regs. 15.585.7-4; 15A.190; and 15B.190. These regulations generally require every individual or entity that holds an ownership interest in a holding or intermediary company to be licensed, even if the interest is a non-voting equity security that does not otherwise grant the owner thereof with any authority over the holding or intermediary company, or the gaming operations of the subsidiary. However, owners of non-voting securities issued by publicly traded companies are not similarly required to be licensed. This has compelled many companies to voluntarily register with the Securities and Exchange Commission to qualify as a “publicly traded corporation” as defined by NRS 463.487, thereby avoiding the licensing of numerous passive investors. Thus, these regulations should be amended to provide the NGC with the authority to require such passive investors to be

licensed, but not make such licensure mandatory.

- NGC 16.330(1). The requirement that copies of all SEC filings must be provided to the GCB should be repealed in view of the fact that all such filings are available via EDGAR (SEC's online "Electronic Data Gathering, Analysis, and Retrieval System"). Moreover, the websites for all public companies now post these filings or provide a related link.

- NGC Reg. 22.150. This Regulation should be amended to add comparable language geared towards non-pari-mutuel race wagering; the current language is geared towards sports wagering.

- Adoption of Regulations Implementing NRS 463.270(8). To date, the NGC has not adopted regulations providing for the manner or method by which the GCB accepts gaming licenses that are voluntarily surrendered.

- Adoption of Regulations Implementing NRS 463.680 463.720. These foreign gaming statutes

have been implemented through long-standing policy statements by the GCB and the foreign gaming reports required by licensees have created a lot of confusion. In some situations, a licensee is required to provide information to which it does not have access. In other situations, a licensee is required to file foreign gaming reports that contain the same information already filed with the GCB through their compliance programs. More detailed regulations that clarify who are required to file certain reports and that consider the redundancy of such information are long overdue.

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