

Italics changes recommended updates by Comptroller General per work sessions of TC.

Red and Blue Changes recommended updates by Tribal Attorney.

NET GAMING REVENUE TAX ORDINANCE

Ordinance #09-100-05

Article I. Purpose; Findings

- 1.01. Purpose. The purpose of this Ordinance is to institute a tax on the *net* gaming revenues of the Tribe's gaming Enterprise, in order to fund the reasonable regulatory costs incurred by the Tribal Gaming Commission and the reasonable fees, expenses and internal overhead costs incurred by the Tribe in overseeing the Enterprise.
- 1.02. Findings. The Tribal Council, in adopting this Ordinance, makes the following findings -
- a. The Tribal Council has the delegated authority and responsibility to enact ordinances to protect the general welfare of the Little River Band; and
 - b. The Tribal Council and the Tribal Gaming Commission have the responsibility and duty to ensure that the gaming Enterprise is properly regulated, and that adequate tribal supervision of the Enterprise exists; *and*
 - c. The Tribal Council desires to ensure that adequate funding exists to fulfill these responsibilities; and
 - d. The Tribal Council has the sovereign authority pursuant to Article IV, Section 7(i)(3) of the LRBOI Constitution to enact taxes to fund its governmental operations.

Article II. Adoption; Amendment; Repeal

- 2.01. Adoption. This Ordinance is adopted by the Tribal Council by Resolution #01-0425-08.
- a. Resolution #06-0830-602 - Emergency amendments to application of tax revenues in section 6.01.
 - b. Resolution #09-0304-056 - amended to prohibit expenditure of funds until an audit of the Enterprise financials has been completed.

- c. Resolution #13-1204-367, increasing percentage of tax and allowing for future increases or decreases for limited periods of time by Tribal Council Resolution.
 - d. Resolution #14-0521-152, including a definition for "net win," deleting certain other definitions and including "capital improvements" as a use for the revenue in Section 6.02(b).
 - e. Resolution #20-1014-293, creating an exception from tribal tax for online gaming and online sports betting activities.
 - f. *Resolution 25-0813-???, update Ordinance to reflect Net gaming tax as well as Council restricting funds to ensure intended use.*
- 2.02. Amendment. This Ordinance may be amended from time to time as set forth in the Constitution or in procedures adopted by the Tribal Council.
- 2.03. Repeal. This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.
- 2.04. *Any provision of this Ordinance which is determined to be illegal by a court of competent jurisdiction or an administrative body having jurisdiction over this Ordinance, or which is otherwise determined to be unenforceable, shall be ineffective to the extent necessary without invalidating the remaining provisions of this Ordinance. This Ordinance will be deemed modified to the extent necessary to render enforceable the remaining provisions of this Ordinance. Severability Clause. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.*

Article III. Definitions.

- 3.01. For purposes of this Ordinance, certain terms are defined in this Section. The word "shall" is always mandatory and not merely advisory.
- 3.02. "Compact" shall mean the [Tribal – State Class 3](#) gaming compact between the Tribe and the State of Michigan, dated as of December 3, 1998, and all amendments, entered into pursuant to Section 1 l(d)(3) of IGRA, as the same may from time to time be in effect.

- 3.03. "Enterprise" shall mean the Little River Band of Ottawa Indians Casino Resort and any other gaming enterprise-established by the Tribe to engage in gaming.
- 3.04. "Gaming" shall mean any and all activities constituting class II or class III gaming (as defined in IGRA) which the Tribe is authorized to conduct under the Compact but shall not include any gaming activity which is conducted in whole or in part off the Band's Reservation.
- 3.05. "Generally Accepted Accounting Principles" or "GAAP" shall mean generally accepted accounting principles as applied within the United States.
- 3.06. "*Net* Gaming Revenue Tax" shall mean the tax instituted and imposed by this Ordinance.
- 3.07. "*Net* Gaming Revenue (Win)" shall mean the net win from gaming activities conducted by the Enterprise which is the difference between gaming wins and losses before deducting costs and expenses, determined in accordance with GAAP consistently applied.
- 3.08. "IGRA" shall mean the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. s.2701 et seq., as it may from time to time be amended.
- 3.09. "Net Win" means the total wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at such machines.
- 3.10. "Regulatory costs" shall mean any and all costs associated with regulatory activities conducted by the Tribal Gaming Commission. 
- 3.11. "Tribal Gaming Commission" shall mean the Little River Band of Ottawa Indians Gaming Commission created pursuant to the Tribal Gaming Ordinance to regulate Gaming of the Tribe in accordance with the Compact, IGRA and the Tribal Gaming Ordinance.
- 3.12. "Tribal Gaming Ordinance" shall mean the ordinance enacted by the Tribe and approved by the NIGC Chair as required under IGRA, which authorizes and regulates Gaming on the Band's Indian lands, as the same may be amended from time to time and approved by the Chair.

Article IV. Administration.

- 4.01. Records and Record Keeping. The Enterprise shall retain all records necessary for the administration of the taxes imposed under this Ordinance for a period of at least three years

from the date such taxes were paid to the Tribe. All of such records are subject to audit by the Tribe.

Article V. Net Gaming Revenue Tax.

- 5.01. Imposition of Tax. A tax is imposed on the Net Gaming Revenue (Win) of the Enterprise in the amount of three and three-quarters percent (3.75%) of such Gaming Revenue (Win) generated as a result of Gaming conducted at any Tribal Gaming Facility.
- 5.02. Collection and Payment of Tax. The tax imposed by section 5.01 hereof shall be payable monthly in arrears, no later than twenty days after the end of each month. The Enterprise shall deliver to the Tribe a certificate signed by an officer stating the amount of the tax and showing how such amount was computed together with such receipts and other documents necessary to recompute the amount. *Tax payments will continue to be deposited in budget line item 1030-121-4005.*
- 5.03. Admission of Tax. The tax imposed by this Ordinance shall be administered by the Tribal Council. The Tribal Council may promulgate rules to administer this Ordinance and may prescribe the form of certificate to be filed at the time the tax is paid by a Gaming Enterprise subject to this tax.
- 5.04. Increases/Decreases of Tax Rate. The Tribal Council is expressly authorized to increase or decrease the amount of the Net Gaming Revenue (Win) tax for limited periods of time when deemed necessary to protect the health, safety or welfare of the Tribe. Any increases or decreases shall only be effective upon adoption of a Resolution that clearly identifies the circumstances requiring the rate change.
- 5.05. Exceptions to Tax. The tax imposed by this Ordinance shall not be administered for those revenues generated from online gaming and online sports betting
- 5.06. Effective Date. This Ordinance shall be effective immediately upon adoption by a Resolution of the Tribal Council.

Article VI. Use of Gross Gaming Revenue Tax Proceeds.

- 6.01. Use of Proceeds. Proceeds from the tax imposed by this Ordinance shall be used for the following purposes and in the following priority:
 - a. To fund all regulatory costs incurred by the Tribal Gaming Commission.

The Gaming Commissions departments will provide annual Budget requests to Tribal Council who will approve and appropriate funds by resolution.

- b. To fund capital improvements as authorized by Tribal Council Resolution.
- c. *To fund annual budgeted general welfare programs.*
- d. Unexpended funds shall be utilized solely for the purpose of funding general welfare program costs for the following year in accordance with the following:

Funds shall not be expended until an audit of the Enterprise financials has been completed. (Remove)

- ii. *A reconciliation between Net Gaming Tax funds accumulated in 1030-121-4005 and approved fund expenditures identified in section 6.01 shall be completed to identify whether excess funding is available or a decrease in funding is necessary.*
- iii. *The Tribal Comptroller General shall present at work session the reconciliation along with suggested budget modifications to the Tribal Council for review.*

6.02. Deposit of Tax Revenues. All tax revenues received under this Ordinance shall *be restricted by Tribal Council* deposited to the credit of the general fund and shall be disbursed only in accordance with the purposes described in section 6.01 (a-d).

6.03. Penalties. Failure to pay any tax revenues required by this Ordinance in a timely manner shall result in a \$5000.00 penalty assessed on a daily basis.

CERTIFICATION

I, *Susan Thull, Tribal Council Recorder*, do hereby certify that this is a true and correct copy of the *Net Gaming Revenue Tax Ordinance* adopted by the Tribal Council Resolution #01-0425-08 on April 25, 2001, and most recently amendment by Tribal Council Resolution #25-TBD-???

Susan Thull, Tribal Council Recorder

Date

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