



State of New Jersey

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DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
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Patrick Madamba, Esq.
Senior Vice President and Legal Counsel
Borgata Hotel Casino & Spa
One Borgata Way
Atlantic City, NJ 08401

Re: Action in Lieu of Complaint – Overstated PGC Deductions

Dear Patrick Madamba:

The Division of Gaming Enforcement (Division) recently completed an audit of Borgata's Internet Gaming Promotional Gaming Credits (PGCs). We identified that the reports submitted by Borgata related to the BetMGM Internet gaming platform from October 2023 through May 2024 included improper Internet Gaming PGC deductions that did not comply with the Division's PGC guidance (See: <https://www.nj.gov/oag/ge/docs/Opinions/2013PGCGuidance.pdf>).

On July 10, 2024, the Division issued an audit finding and assessment finding that PGCs were overstated by \$4,564,515. This resulted in an underpayment of gross revenue tax of \$365,161, which as a result of the Division findings had been paid through the June 2024 tax filing. Interest and tax penalty of \$15,014 and \$18,258, respectively, were assessed in a July 5, 2024 audit letter.

This overstatement of PGCs and subsequent underpayment of gross revenue tax was the second such finding against Borgata in less than 18 months. On March 27, 2023, the Division had issued an earlier audit finding that Borgata had overstated PGC deductions by \$9,844,208, resulting in a gross revenue tax underpayment of over \$787,000 as well as \$87,968 in interest and \$39,377 in penalty in the amount of \$127,345. In addition, the March 27, 2023 letter stated:

This letter is also intended to serve as a reminder to Borgata and BetMGM of the requirements related to Internet gaming PGCs and the need for Division approval before any deductions are taken. In this instance, the Division has decided not to impose any financial penalty for this regulatory violation, and thus, only the gross



revenue tax, penalty and interest are due and payable in accordance with the above. **Should there be future violations of the regulatory requirements associated with Internet gaming PGCs, the Division may take additional action, including monetary penalties.** [Emphasis added].

As background, the Division PGC guidance states that, in order for a bonus program to be approved by the Division as an Internet Gaming PGC, the bonus must be: (1) issued to a patron for the purpose of wagering at an Internet slot machine game, (2) received from the patron as a wager at an Internet slot machine game, and (3) any winnings can be cashed out after the bonus is wagered one time.

The Division's PGC guidance also states that any casino licensee seeking an Internet Gaming PGC deduction must submit a narrative description of the bonus program(s) to the Division that should, at a minimum: (1) comprehensively describe each program, (2) explain how it meets the preceding definition of an Internet Gaming PGC, and (3) contain samples of proposed reports that can accurately track the bonus program and can be audited by the Division. Based on a review of any such submissions, the Division makes its determination whether a proposed bonus program qualifies as an Internet Gaming PGC that is eligible for deduction and approves the report to be filed with the Division for audit purposes. Borgata originally obtained approval for Internet Gaming PGCs on the BetMGM platform in January 2015.

The March 2023 finding was based on the improper inclusion of certain table game bonuses in the calculation of PGCs. The July 2024 finding was based on a software upgrade by BetMGM which had the consequence of deducting PGCs in an amount greater than the amount of bonuses awarded. *N.J.S.A. 5:12-38a* states, in pertinent part: "No such credit shall be reported as a promotional gaming credit unless the casino licensee can establish that the credit was issued by the casino licensee and received from a patron as a wager..." Accordingly, claiming PGCs in excess of the amount of the bonus issued is a clear violation of the statute. Moreover, in the Division's July 10, 2024 audit findings and assessment correspondence, it set forth that it may take additional regulatory action in this matter, including monetary penalties, in that this was the second violation in this PGC area that resulted in a significant gross revenue tax, tax penalty and interest assessment. As this is a second violation regarding PGCs to occur in a short time frame, a civil penalty in addition to the tax penalty is appropriate.

Among the factors to be considered by the Division in determining an appropriate sanction for a violation of the statute, *N.J.S.A. 5:12-130* sets forth the risk to the public and to the integrity of gaming operations, the seriousness of the conduct, and the prior record of the licensee. *N.J.S.A. 5:12-129* permits a civil penalty of up to \$100,000 per violative instance against a casino licensee.

The Division views this matter as serious. The original violation was an understatement of gross revenue by almost \$10 million. This second understatement of gross revenue was in an amount of over \$4.5 million. These understatements resulted in the assessment of additional taxes, tax penalties and interest of over \$1.3 million. The fact

that this conduct was repeated less than 18 months after the Division warned an additional violation of this type could result in a civil penalty is also to be considered. The Division notes that the underpayment of taxes was remedied quickly in each case, and software fixes were deployed to correct the reporting errors with regard to PGCs.

Accordingly, the Division accepts Borgata's offer to pay a civil penalty in the amount of \$75,000 to settle the overstatement of PGCs in violation of *N.J.S.A. 5:12-144.2*. Payment shall be made upon the receipt of an invoice issued by the Division's Revenue Collection Unit.

Very truly yours,



MARY JO FLAHERTY
Interim Director

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