

Gaming Commission

Oversight of Casino Revenues and Regulatory Oversight Reimbursement Collections

Report 2019-S-8 | January 2020

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine whether the Gaming Commission (Commission) adequately monitors casinos to ensure revenues are appropriately collected, accounted for, and transmitted to the State and regulatory oversight costs are assessed and collected as required by law or compact. Our audit covered the period April 1, 2016 through March 31, 2019. We also considered information received from the Commission through October 28, 2019.

About the Program

The Commission regulates all aspects of gaming activity in New York and is responsible for overseeing three types of casinos in the State: commercial, video lottery terminal (VLT),¹ and Class III tribe/nation (tribe/nation). Commercial and VLT casinos are required to remit a percentage of their gaming revenues to the State, and tribe/nation casino remittances are defined in compacts (agreements with the State). During the three fiscal years ended March 31, 2019, the Commission received \$4.2 billion in revenues from casinos.

The Commission has officials at each casino to ensure compliance with gaming regulations and tribe/nation compacts. Costs for this oversight are to be collected from each casino. During the three fiscal years ended March 31, 2019, the Commission collected \$144.8 million from VLT casinos and \$8.9 million from tribe/nation casinos for oversight costs. The Commission had not billed commercial casinos for oversight costs.

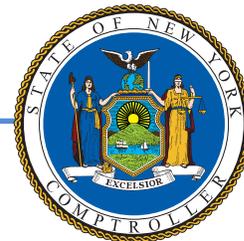
Key Findings

- An estimated \$13 million has not been billed or collected from commercial casinos for oversight costs. While the Commission stated that a lack of regulations had delayed assessing commercial casinos, the rulemaking process is now complete and these costs will be billed.
- The Commission does not have policies regarding dispute resolution procedures when a casino disagrees with oversight cost charges, leaving the Commission unprepared to address disputes that may arise.
- We found that, while the Commission is adequately monitoring commercial, VLT, and tribe/nation casinos to ensure that revenues are appropriately collected, accounted for, and transmitted to the State as required, the Commission is not evaluating risks related to tribe/nation revenue reporting.

¹ For the purposes of this report, the term “VLT casinos” describes the ten New York State gaming facilities (including the two facilities that have since ceased operating as VLT casinos) that were remitting percentages of their VLT gaming revenues to the State during our audit period of April 1, 2016 through March 31, 2019.

Key Recommendations

- Assess and bill commercial casinos' oversight costs in a timely manner.
- Develop and implement policies and procedures for handling oversight cost disputes.
- Include tribe/nation casino revenue reporting in the Commission's annual risk assessment, and adapt procedures as needed based on results.



Office of the New York State Comptroller Division of State Government Accountability

January 10, 2020

Mr. Barry Sample
Chair
Gaming Commission
One Broadway Center
Schenectady, NY 12301

Dear Mr. Sample:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of Casino Revenues and Regulatory Oversight Reimbursement Collections*. This audit was performed pursuant to Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Commercial casino	Any of the four casinos authorized based on the Upstate New York Gaming Economic Development Act of 2013	<i>Key Term</i>
Commission	Gaming Commission	<i>Auditee</i>
Compact	An agreement between a tribe/nation and the State that governs Class III gaming activities	<i>Key Term</i>
Gaming revenues	Casino revenues obtained from gaming	<i>Key Term</i>
Tribe/nation casino	A Class III, full-scale casino operated by the Oneida, Saint Regis Mohawk, or Seneca tribe/nation in New York	<i>Key Term</i>
VLTs	Video lottery terminals (i.e., gaming machines that resemble slot machines, but for which a central computer determines the results of each play)	<i>Key Term</i>

Background

The Gaming Commission (Commission) was created when Chapter 60 of the Laws of 2012 merged the Racing and Wagering Board with the Division of Lottery into a single State agency. The Commission regulates all aspects of gaming activity in New York and is responsible for overseeing three types of casinos in the State: commercial, video lottery terminal (VLT),² and Class III tribe/nation (tribe/nation).

The Upstate New York Gaming Economic Development Act of 2013 (effective January 1, 2014) allowed for four commercial casinos to operate in upstate New York since the passage of an amendment to the New York State constitution to permit casino gambling in the State. Tioga Downs converted from a VLT to a commercial casino in December 2016, followed by the opening of three other commercial casinos.

VLTs resemble slot machines, but the results of each play on a VLT are determined by a central computer. State VLT casino operations began in 2004 with Saratoga Gaming & Raceway, and nine other facilities later opened, two of which have since ceased operating as VLT casinos.

In New York, there are three tribe/nations – the Oneida Indian Nation of New York, the Saint Regis Mohawk Tribe, and the Seneca Nation of Indians – that operate seven Class III, full-scale casinos. Each tribe/nation has its own gaming compact with the State. The Oneida Nation operates three tribe/nation casinos in the State, the Saint Regis Mohawk Tribe operates one in northern New York, and the Seneca Nation operates three in western New York.

As of May 1, 2019, the Commission provides regulatory oversight to 7 tribe/nation, 8 VLT, and 4 commercial casinos, for a total of 19. Each type of casino is governed by different State laws and regulations, and tribe/nation casinos are also subject to compacts with the State as well as tribal and federal laws. Commercial and VLT casinos are required to remit a percentage of their revenues to the State. Tribe/nation casino remittances are defined in the compacts and are also referred to as exclusivity payments in recognition of compact provisions that prohibit commercial casinos from operating within the same specific geographic regions. All but one VLT casino is required to remit 10 percent of its net gaming revenues after payout of prizes to players; commercial casinos remit 37 to 45 percent of gross gaming revenues from slot machines and 10 percent of gross gaming revenues from all other sources; and tribe/nation casinos remit 25 percent of either their reported net

² For the purposes of this report, the term “VLT casinos” describes the ten New York State gaming facilities (including the two facilities that have since ceased operating as VLT casinos) that were remitting percentages of their VLT gaming revenues to the State during our audit period of April 1, 2016 through March 31, 2019.

gaming revenues after payout of prizes to players or net currency retrieved from slot machines, depending on the tribe.

During the three fiscal years ended March 31, 2019, the Commission received \$4.2 billion in casino revenues: \$3.5 billion from VLT casinos, \$338.6 million from commercial casinos, and \$374.2 million from tribe/nation casinos. Included in the \$374.2 million tribe/nation casino revenues is about \$125 million from the Seneca Nation paid from April 1, 2016 to March 31, 2017. The Seneca Nation is disputing and has ceased paying revenue remittances due after March 2017. Due to this ongoing dispute, we did not audit the Commission's oversight of the Seneca Nation's casino revenues.

The Commission has officials at each of the 19 casinos to ensure compliance with gaming regulations and tribe/nation compacts. The costs of these oversight activities (also known as regulatory or operation and administration costs) are to be collected from each casino as stipulated in VLT and commercial casino laws/regulations and State-tribe/nation compacts. During the three fiscal years ended March 31, 2019, the Commission collected \$144.8 million from VLT casinos and \$8.9 million from tribe/nation casinos. Gaming had not billed commercial casinos for oversight costs since it was authorized in 2014 to do so.

Overall, VLT casino revenues are distributed among the State Education Department, the Commission's administration, the casino operator's commission, and racing support payments (e.g., purses, New York Racing Association operations, capital expenses). Some VLT facilities may also receive a marketing allowance and/or capital award distribution. For the tribe/nation casinos, revenues from exclusivity payments are generally distributed to counties as specified in the State Finance Law, and any remainder goes to the General Fund. Revenues from commercial casinos are distributed by law as follows: 80 percent for elementary and secondary education or real property tax relief, 10 percent for the host municipality or county, and 10 percent for the remaining counties on a per capita basis (after removing the host county's population). Additionally, each commercial casino must make an annual payment of \$500 per slot machine and table game, which is used to support Office of Addiction Services and Supports' problem gambling programs.

Audit Findings and Recommendations

We found the Commission is not adequately overseeing the reimbursements of regulatory oversight costs. The Commission stated it has not billed commercial casinos approximately \$13 million for these costs. Another \$9 million in oversight costs is being disputed by two tribe/nations.

We also found the Commission is adequately monitoring casinos to ensure that revenues are appropriately collected, accounted for, and transmitted to the State as required. However, we identified some opportunities for improving the Commission's oversight of tribe/nation casino revenue reporting risk assessment.

Failure to collect all gaming revenues due to the State decreases the amount available for additional school aid and real property tax relief and prevents interest that could have been earned or saved on accurately calculated revenues and promptly received payments. Failure to recover oversight costs effectively leaves the State to subsidize the Commission's regulatory functions.

Oversight Cost Reimbursement

The Commission is responsible for ensuring that commercial, VLT, and tribe/nation casinos operate in compliance with gaming laws/regulations and compact provisions. To accomplish this oversight, Commission officials are on site during all hours of operation for commercial and tribe/nation casinos and for a portion of VLT casinos' operating hours. The resulting personal service costs, along with some ancillary costs such as travel, lodging, and administration, are to be assessed and collected from each casino in accordance with commercial and VLT casino laws/regulations and tribe/nation compact provisions. During the three fiscal years ended March 31, 2019, the Commission collected \$144.8 million from VLT casinos and \$8.9 million from tribe/nation casinos for such costs. As of August 30, 2019, a balance of \$9 million from tribe/nation casinos was being disputed and, according to the Commission, \$13 million had not yet been billed or collected from the commercial casinos.

VLT Casinos

We found the Commission is properly retaining and recording the required amounts of the VLT casinos' weekly allocations for oversight reimbursement purposes in the Statewide Financial System.

Commercial Casinos

The Commission has been authorized since 2014 to assess commercial casinos for oversight costs, but it wasn't until April 2019 that it issued Part 5302 of Title 9 of the New York Codes, Rules and Regulations, which defines how costs are to be assessed. Pursuant to the governing law and regulation, commercial casinos should be assessed annually for Commission oversight costs, including payroll, fringe benefits, non-personal service expenses, and administrative overhead costs. These oversight costs are then to be assessed to each casino based on the number of gaming positions, defined as each player position at a slot machine, each player position at an electronic table game, and each table game. At the end of each State fiscal year, the Commission must determine the actual costs and offset that amount against the amount assessed at the beginning of the year, with the variance between these amounts being added or subtracted from the next annual assessment.

We found that the Commission has neither billed nor collected oversight costs from the commercial casinos. As of October 28, 2019, the Commission was in the process of finalizing the assessments for all four commercial casinos. The Commission reported it has not billed approximately \$13 million in oversight costs to the four commercial casinos. Officials stated that the casinos are aware that the oversight costs have been accruing and that they will be billed. In addition to the \$13 million owed, the State has missed out on interest that would have otherwise been earned or saved had the funds been available. As of October 28, 2019, the Commission had provided no documentation of its assessment of the \$13 million.

Commission officials stated that, due to the lack of regulations, the process of allocating oversight costs to the commercial casinos became complicated. In response to our findings, they stated that the rulemaking process has been completed and that assessment and remittance of the oversight costs for commercial casinos will be undertaken. However, once initiated, the billing of these costs may result in disputes with commercial casinos, and the Commission should be prepared with resolution processes and policies. The Commission does not have written policies and procedures for handling such disputes.

Tribe/Nation Casinos

Tribe/nation compacts detail what the State assesses and each tribe/nation pays for costs incurred by the State in regulating gaming. Annually, the Commission provides each tribe/nation with the expected oversight costs for the upcoming State fiscal year. The Commission then bills each tribe/nation quarterly for the actual expenses. The tribe/nations are to reimburse the

State within 30 days of billing or, if they dispute any of the expenses, they are to officially notify the Commission within the 30-day period and provide the reasons for dispute. For the Seneca Nation, if a resolution results in disputed amounts being owed to the State, the nation shall be assessed interest equal to two percentage points above the prime lending rate. This amount is to be compounded daily on the amounts ultimately remitted or required to be remitted to the Commission. The Saint Regis Mohawk Tribe and Oneida Nation compacts do not have interest penalties.

We examined the billing requirements for each tribe/nation's compact; the invoices sent to each tribe/nation; and the corresponding payments, deposits, and any related dispute letters. For the three fiscal years ended March 31, 2019, we found that the Commission timely billed the tribe/nations for oversight costs, but some tribe/nations disputed some of those costs or the assessment in general, resulting in the Commission collecting only \$8.87 million of the \$17.86 million billed. We found the Saint Regis Mohawk Tribe has paid each quarterly assessment, for a total of \$3.2 million. The Oneida Nation paid just under \$5 million of the \$5.65 million assessed by the Commission, disputing the balance of just over \$650,000. The Seneca Nation fully paid the assessment for the quarter ended June 30, 2016, and then disputed in full all subsequent assessments, totaling \$8.37 million through the end of our audit period. The Commission does not have written internal policies and procedures for handling such disputes.

Recommendations

1. Assess and bill commercial casinos' oversight costs in a timely manner.
2. Develop and implement policies and procedures for handling oversight cost disputes.

Revenues

Overall, we found the Commission is properly monitoring casinos to ensure revenues are appropriately collected, accounted for, and transmitted to the State as required by the law or compacts. We did, however, identify opportunities to improve oversight at tribe/nation casinos.

Commercial and VLT Casinos

The Commission has adequate oversight practices for commercial and VLT casino revenue collection and distribution and to ensure that the daily gaming data transmitted – part of the basis for revenue collection – is accurate. The Commission requires each commercial and VLT casino to transmit

daily gaming data and supporting schedules and to verify the data against casino records and VLT computer-generated reports. Information is subject to multiple levels of review, including desk audits of the gaming data, and Commission officials are present at each commercial and VLT casino. The VLT casinos' central system, in which all VLTs are connected, is housed at the Commission's headquarters, allowing officials access to the central system's data to verify reported revenues. The Commission also has read-only access to the central system for each commercial casino. In addition, an independent firm audits the VLT's central system annually to provide reasonable assurance that controls are effective, suitably designed, and properly applied. The independent firm noted no exceptions to control testing for calendar years 2016, 2017, and 2018. Independent gaming laboratories test the software and controls of commercial casinos' electronic gaming devices to ensure they comply with the Commission's rules and regulations. Test results from the laboratories showed that the devices were in compliance.

Tribe/Nation Casinos

We found the Commission has established policies and procedures to regulate the revenue collection and distribution from the tribe/nation casinos we reviewed. (Due to an ongoing dispute regarding revenue remittances, we did not audit the Commission's oversight of the Seneca Nation's casino revenues.)

New York State's Internal Control Framework states that the act of managing the risks associated with achieving an organization's objectives requires an assessment of those risks. Three types of objectives emphasize different aspects of internal control within an organization: operations, compliance, and reporting.

While we found the Commission assessed risk for operations and compliance, it did not evaluate risks related to revenue reporting for each tribe/nation casino. By failing to include revenue reporting in each tribe/nation casino's annual risk assessment, the Commission is missing opportunities to identify and mitigate potential risks. (Risk assessments for commercial and VLT casinos include revenue reporting.)

In response to our findings, the Commission stated it would include tribe/nation casino revenue reporting in its annual risk assessment.

The Commission performs a desk audit based on self-reported daily gaming records for one tribe/nation casino (the Saint Regis Mohawk Tribe's casino) as the other tribe/nations either are not required to submit this information or are disputing the revenue payments. The Commission has employees on site

at each tribe/nation casino to ensure compliance with compact provisions, including gaming practices. However, these on-site officials do not verify the accuracy of revenues collected. Reported revenues are not reviewed against source documentation where it is allowed under the Saint Regis Mohawk Tribe compact. Absent this type of review, the Commission lacks full assurance that the data used to calculate revenue amounts from the tribe/nation casino where it is allowed is reliable, particularly if a risk assessment shows it is warranted.

The Commission contends that there is sufficient revenue verification, including daily review and analysis of amounts retrieved from slot machines, revenue monitoring through independent gaming device certification, verification of anticipated machine revenues against a facility's slot monitoring system computation, comparison of the counts performed by casino staff to the slot system calculation, the nation/tribe's own revenue analysis and calculation, and an annual audit conducted by an independent firm.

While we agree, in part, that the Commission's activities provide some assurance that reported revenues are complete and accurate, the Commission's risk assessment may indicate that a periodic review of reported revenues to source documentation should be performed to confirm accuracy.

We found the Commission is not pursuing all revenue verification available under the compacts. Each tribe/nation compact offers activities the Commission may undertake to strengthen its controls. For example:

- The Oneida Nation compact does not require the nation to send its audited financial statements, but does require it to submit the independent certified public accountant's opinion on the fair presentation of the audited financial statements, which would provide assurance that the financial statements are free from material misstatement. However, during our audit scope period, the Commission did not receive these letters. After issuance of our preliminary report, the Commission obtained these letters from the Oneida Nation.
- The Saint Regis Mohawk Tribe compact allows auditors employed by the Commission to access, inspect, and copy records of Saint Regis Mohawk tribal gaming operations, including computer log tapes, but the Commission has not requested this information.

These activities allowed under the compacts could be used to better ensure that data used to calculate revenues owed to the State is accurate.

The Commission disagreed with the assertion that it has failed to use all resources authorized under each compact to verify revenue payments to the

State. However, based on the lack of action regarding the potential sources of additional information listed above, we contend further avenues are available to help the Commission verify data used to calculate revenues. Failure to exercise all actions available under compacts may limit the effectiveness of the Commission's oversight of tribe/nation casino revenue reporting, potentially resulting in inaccurate revenue reporting and payment calculations to the State.

Recommendations

- 3.** Include tribe/nation casino revenue reporting in the Commission's annual risk assessment, and adapt procedures as needed based on results.
- 4.** Exercise oversight activities identified and permitted in compacts, as risk assessment results warrant, to ensure reported revenues and payment calculations are correct.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether the Commission adequately monitors casinos to ensure revenues are appropriately collected, accounted for, and transmitted to the State and regulatory oversight costs are assessed and collected as required by law or compact. Our audit covered the period April 1, 2016 through March 31, 2019. We also considered information received from the Commission through October 28, 2019.

To accomplish our audit objectives and assess internal controls, we reviewed the relevant laws, regulations, Commission policies and procedures, contracts and compacts, financial statements for each casino (except the Oneida Nation, which is not required to submit audited financial statements), auditor peer reviews for each financial statement, third-party and central system certifications of the commercial casinos, and the Service Organization Control Report for VLT casinos' central system. Due to an ongoing dispute regarding revenue remittances, we did not audit the Commission's oversight of the Seneca Nation's casino revenues. We interviewed officials to obtain an understanding of the Commission's processes.

We also verified casino remittances based on the Commission's recorded revenues to the Statewide Financial System's casino revenue remittances. With the exception of the Oneida Nation and two VLT facilities in which VLT revenues are commingled with other activities or venues, we reconciled the Commission's recorded revenues to the remaining 16 casinos' certified financial statements. The independent firms that audited the casinos and certified the financial statements issued unqualified opinions and attested to being independent. We verified the independent firms' competency by obtaining their peer reviews and noted all but one were without exception. The one deficiency noted had no bearing on its independence or competency in rendering an opinion on the casino's financial statements.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to Commission officials for their review and formal written comment. We considered their comments in preparing this final report and have included them in their entirety at the end of the report. Commission officials agreed with our recommendations and stated what they have done or will do to implement the recommendations.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Chair of the Gaming Commission shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

December 30, 2019

Mr. Mark Ren, Audit Manager
Office of the State Comptroller
Division of State Government Accountability
110 State Street
Albany NY 12236

Dear Mr. Ren:

Below is the Commission's response to the recommendations in the Audit Report 2019-S-8, Oversight of Casino Revenues and Regulatory Oversight Reimbursement Collections.

Finding 1: Oversight Cost Reimbursement

1. Assess and bill commercial casinos' oversight costs in a timely manner.

The Commission agrees with the recommendation. It has been implemented. The first bills were issued; the Commission will continue to bill in a timely manner going forward.

2. Develop and implement policies and procedures for handling oversight cost disputes.

The Commission agrees with this recommendation and notes that there are existing policies and procedures in place for handling cost disputes with its regulated entities; these will be applied to commercial casinos should the need arise.

Finding 2: Revenues

3. Include tribe/nation casino revenue reporting in the Commission's annual risk assessment and adapt procedures as needed based on results.

The Commission agrees with this recommendation. Tribe/nation revenue reporting will be included in the annual risk assessment. The Commission notes that there are existing procedures in place for revenue reporting; any procedures not in writing will be documented as necessary.

-
4. Exercise oversight activities identified and permitted in compacts, as risk assessment results warrant, to ensure reported revenues and payment calculations are correct.

As noted in the response to the preliminary findings, the Commission has multiple oversight activities in place designed to ensure that reported revenues and payment calculations are correct. However, should the risk assessment indicate that these are insufficient, the Commission will determine what additional steps may be necessary to confirm revenues and exclusivity payment calculations and implement same.

Thank you for the opportunity to respond to the draft audit report.

Yours truly,



Robert T. Williams
Executive Director

Contributors to Report

Executive Team

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Brian Reilly, CFE, CGFM - *Audit Director*

Mark Ren, CISA - *Audit Manager*

Ann Marsh, CPA - *Audit Supervisor*

Theresa Nellis-Matson, CPA - *Examiner-in-Charge*

Inza Kone - *Senior Examiner*

Daniel Choiniere - *Staff Examiner*

Andrea Majot - *Senior Editor*

Contact Information

(518) 474-3271

StateGovernmentAccountability@osc.ny.gov

Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236



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