

IRS Sticks Its Hands In The Tip Jar

■ Tribal Council intends that the deal will safeguard employees from IRS audits.

By Ron Karten

Tribal casinos are not betting against the Internal Revenue Service (IRS).

Across the country, the taxing agency is developing agreements with the employers of tip-earners. The purpose of the agreements is to increase tax revenues for the government. The result for most employees is less left in their paychecks.

At the Spirit Mountain Casino, nobody appears to be entirely happy about the signing of tip agreements with the federal agency, but sign they do.

In Grand Ronde, the Tribal Council "wanted something fair," said Tribal Council Chairwoman Cheryl Kennedy, "not something that would negatively impact the employee." The Tribe worried that absent an agreement of this sort, some casino employees could face huge tax problems.

As the IRS implements agreements aimed at increased tip reporting at all Tribal casinos, everyone from food and beverage staff to dealers are chipping in more each paycheck, to the tune of \$100-plus on every paycheck.

Historically, the attraction of tip earning jobs has been that much of it remains off the books. Not so, anymore.

IRS studies of Pacific Northwest tip earners indicate that those working under IRS agreements pay taxes on an average \$13.21/hour (\$26,420/year) including tips and salaries while those without tip agreements report earning an average of \$9.33/hour (\$18,660/year), according to Ken Voght, Manager of the IRS's Outreach Planning and Review Office.

Agreements between casinos and the IRS such as the Gaming Industry Tip Compliance Agreement (GITCA) make this minor windfall for the government possible.

The process of securing GITCAs involves individual negotiations with each casino. The goal of these negotiations is to come up with an amount of tips that when added to salary will fairly represent the earnings of each employee. Taxes on both salary and the agreed-upon level of tips is then paid by the casino before the employee receives his/her checks.

The decision takes into account shift differences and particular hours that a tip-earner works, the size of the community and the tipping experiences of tip-earners in comparative facilities.

IRS "overtures" to the Spirit Mountain Casino began more than four years ago, according to Kennedy. Negotiations between the agency and the casino were more than a year in the making, according to Randy Dugger, Director of Guest Services at the casino.

As casino leaders negotiated with IRS agents, they also kept employees informed about the coming changes and what choices tip earning employees would have, according to employees of the casino.

Tip earners on table games chose to pool their tips. The total in tips goes through the casino's accounting department and then is divided up to employees according to hours and shifts worked, and taxed on the way.

Poker dealers and food and beverage servers opted for an hourly-rate method. This method establishes a certain tip rate per hour, but accommodations can be made to only include

the hours when the employee is in a position to receive tips; not, for example, when the employee is stocking or cleaning.

These averaging plans mean that when business is slow, employees might pay more taxes than the tips indicate but when business is hopping, employees pay less. That, however, is not the effect of the agreement in practice.

"It forces us to leave at the slow times," said nine-year Buffet Wait Staffer Keli Campbell, "because the IRS takes too much." That means she loses her scheduled hourly rate because it's not worth working when taxes are going to come out of tips that don't exist.

Legends servers took an option that taxes them on a percentage of sales. This option is possible because Legends keeps track of all sales and who makes them, while, for example, that's not true of table games.

A tip earner who asked not to be identified said that employees are moving out of tip-earning positions to avoid the problem altogether.

And while employees are overwhelmingly unhappy about having their tips counted for them and reduced by the time the checks come out, the IRS has put the best face on the process.

By joining the agreement, IRS sources said, for example, that each employee is indemnified from being audited based on their reported tips,

office of Indian Tribal Governments.

The new IRS took on Las Vegas casinos first, but its tentacles have been reaching into Tribal casinos ever since.

The IRS now has agreements with 90 of the 208 Tribes with casinos across

buffet Wait Staffers like Misty Hunt, Campbell and Cindi Crowe, earning in the neighborhood of that average \$13.21 an hour, are now filling the gaps left in the nation's budget by Prudential Financial with well over

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~ Keli Campbell
Buffet Wait Staffer

the country, according to Voght. Here in Oregon, the agency has agreements with six of the nine federally recognized Tribes in the state. All nine own and operate a casino.

Not A Universal Principle

Taxing American individuals and businesses on all earnings is not a universal principal, however. Between 2001 and 2003, according to a joint project of Citizens for Tax Justice & the Institute on Taxation and Economic Policy, 82 major U.S. companies paid zero or less in federal income taxes in at least one year.

"In the years they paid no income tax, these companies earned \$102 billion in

\$2 billion in untaxed profits and General Electric, where 74 percent of nearly \$37 billion in annual profits went untaxed in the years 2001-2003, according to the report.

While these giant corporations end up with negative tax balances, new tipping requirements have resulted, in a few instances, in employees at Spirit Mountain Casino ending up with negative check balances. Some of these employees have opted for an expensive combination of health and 401-K plans and in some cases a garnishment or two has opted for them.

In one case, an employee concerned about retirement scheduled more to go into her 401-K plan than her paycheck could cover with the higher level of taxes.

"It's been difficult for some," said Dugger, "not just financially but it's also a hit on their morale."

"When you're expecting the income after, what, nine years, it's tough to adjust to the tips not being there," said Campbell.

"It's hard to make the payments," said single mom and nine-year staffer Crowe. Every two weeks, she said, her paycheck is \$100 lighter.

The question is not a simple one for Tribal Council and casino administrators. They know that a number of veteran gaming employees have seen first hand the problems that audits can cause when the money is spent but taxes are still owed.

"We garnish wages," said Christie Jacobs. "If that's not possible, we'll take money out of your bank account, if you have one. Then, we'll start looking at what you own, what we can take. It starts with your house, your car. To me, the main good thing about this (agreement) is, it takes all of that worry away."

These casino-IRS agreements indemnify both employee and employer against tip-related audits.

Currently, the IRS audits less than one percent of all tax returns, according to Voght.

Without the agreements, the casino also has potential liabilities when the IRS audits casino employees, said Dugger. "Whenever there's an audit and employee taxes are shown to have not been paid, the employer is responsible for the employer's end."

Employers have long tried to avoid such agreements, not only because of the extra work the agreements require, but also because they are morale killers for employees. Courts, however, have sided with the IRS when employers argue that they should not be the tips police.



Fair Play — Buffet wait staffers (l to r) Keli Campbell, Cindi Crowe and Misty Hunt, all who have worked at the casino for nine years or more, have seen their paychecks shrink and their schedules affected by the recent IRS agreements.

and also, of course, is freed from the job of keeping track of tips for potential audits. (In the event of an audit, an employee can best make a case with records of tips that have been kept in writing on a regular basis.)

In addition, these sources said, the increased amount of reported income should translate into a larger Social Security check down the line or higher disability payments should they become necessary. It also means that employees may do better on credit reports and loan applications.

The Spirit Mountain Casino signed these agreements with the IRS last year, and in October began its first year under the agreements.

The IRS was organized along geographic lines until 1998. Today, the IRS is structured around customer groups, said Christie Jacobs, Director of the Of-

pretax U.S. profits," the report said. "But...these companies generated so many excess tax breaks that they received outright tax rebate checks from the U.S. Treasury, totaling \$12.6 billion. These companies' 'negative tax rates' meant that they made more after taxes than before taxes in those no-tax years."

"Twenty-eight corporations enjoyed negative federal income tax rates over the entire 2001-03 period. These companies, whose pretax U.S. profits totaled \$44.9 billion over the three years included, among others: Pepco Holdings (-59.6 percent tax rate), Prudential Financial (-46.2 percent), ITT Industries (-22.3 percent), Boeing (-18.8 percent), Unisys (-16.0 percent), Fluor (-9.2 percent) and CSX (-7.5 percent), the company previously headed by our current Secretary of the Treasury."

As a result, Spirit Mountain Casino

Photo by Ron Karten