AMERICAN
GAMING
ASSOCIATION

799 9th Street NW, Suite 700
Washington, D.C. 20001
MAIN LINE 202.552.2675
FAX 202.552.2676
www.americangaming.org

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By Hand Delivery and Electronic Submission

Commissioner of Internal Revenue
Attn: CC:PA:LPD:PR (REG-132253-11)
Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Commissioner of Internal Revenue
Attn: CC:PA:LPD:PR (Notice 2015-21)
Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

RE: <u>REG-132253-11</u> – IRS Proposed Regulation Regarding Return of Information as to Payments of Winnings from Bingo, Keno, and Slot Machine Play; <u>IRS Notice 2015-21</u> – Safe Harbor Method for Determining a Wagering Gain or Loss from Slot Machine Play

Dear Mr. Commissioner:

On behalf of the American Gaming Association (AGA), the national trade association which represents licensed Tribal and commercial casino operators and gaming suppliers supporting 1.7 million U.S. jobs across 40 states, we welcome this opportunity to submit these comments on the IRS proposed regulations (REG-132253-11) regarding casino tax information reporting with respect to payments of winnings from slot machine play and IRS Notice 2015-21 that provides a new safe harbor method for determining a patron's wagering gain or loss from slot machine play.

I. Introduction

Slot machine gaming is offered by a broad range of gaming establishments serving diverse sectors of the gaming marketplace. These include:

- High-end establishments in major gaming centers;
- Properties serving regional markets where customers make multiple trips throughout the year;
- Properties serving a predominantly local base of customers who make frequent visits; and
- Riverboats.

As a threshold matter, it is very important that any new tax information reporting rules for slot winnings and losses provide sufficient flexibility to reflect this diversity of the casino slot gaming marketplace. For example, properties serving regional markets with nearby customers who come regularly can have different financial resources, cost structures, customer profiles, and systems capabilities than high-end establishments with large hotel casino facilities serving a destination clientele in major gaming centers such as Las Vegas.

AGA appreciates its longstanding, constructive working relationship with Treasury and IRS on a range of tax regulatory and reporting issues, including tax information reporting issues that have similar types of technology and business process issues to those raised in the IRS proposed guidance on slot reporting by casinos. For example, we have worked collaboratively with the IRS staff in the employment tax area to develop the path-breaking Gaming Industry Tip Compliance Agreement (often known by its acronym, "GITCA"). This agreement provides for automated reporting to IRS of employee tips using stipulated tip rates worked out between industry and IRS.

In the course of developing this industry-wide tip agreement, AGA facilitated meetings with gaming industry experts and the IRS to work through complex operational issues and reach common ground. We believe that this collaborative approach between industry and Treasury/IRS would be beneficial for the proposed slot reporting guidance. We very much appreciate the recent meeting we had with a broad range of members of your staff and of the Treasury staff to discuss Treasury/IRS's thinking, concerns, and objectives for this proposed guidance and as well as to brief the staffs on our industry's technology and business systems, processes and capabilities.

The gaming industry is proud of its strong record of compliance on tax information reporting, including reporting on customer's winnings, and it is in this spirit that we approach our comments on the proposed slot reporting guidance.

II. Proposed Mandatory Slot Tax Information Reporting Based on Electronic Player Tracking by the Casino

We recognize and appreciate that one of the expressed objectives in the proposed slot reporting guidance is an effort to "simplify slot reporting" by casinos. As described below, the gaming industry has serious concerns with the path taken by Treasury and IRS in the effort to achieve such "simplified" reporting – specifically, the mandatory nature of the proposed slot tax information reporting based on electronic player tracking by the casino.

The proposed new mandatory slot tax information reporting system would apply to "electronically tracked slot machine play", defined under the proposed regulations to be "where an electronic player system that is controlled by the gaming establishment (such as through the use of a player's card or similar system) records the amount a specific individual won and wagered on slot play." Prop. Reg. §1.6041-10(b)(1).

Under the new reporting system for "electronically tracked slot play", where the customer uses a player tracking card, the casino must report slot winnings on the basis of aggregate slot winnings during a single gaming session (measured as the calendar day) where *both* of the following criteria are met: (1) the customer's total winnings from such electronically tracked slot play during the same gaming session netted against the total amount of slot wagers during the same session equal $1,200 or more; and (2) at least one single slot win during the session equals or exceeds $1,200. Prop. Reg. § 1.6041-10(b)(2)(D). Thus, if a single $1,200 win occurs and all winnings from slot play during the session netted against all wagers during the session total $1,200 or more, the total slot winnings for the session must be reported by the casino on IRS Form W-2G.

A. Adverse Impact on Crucial Casino Industry Marketing Tool

We begin against the backdrop that the gaming industry already bears a significant labor cost and a lost business revenue burden for tax information reporting on slot winnings under the current rules. Under these rules, the slot machine "locks up" and goes out of service upon a $1,200 (or more) jackpot, so that the casino can gather the necessary tax information from the customer and an IRS Form W-2G can be prepared. AGA is aware of no other U.S. industry that must take its assets out of the production of revenue to fulfill its tax reporting responsibilities. The proposed slot reporting guidance would substantially magnify that burden on the casino to the point of serious harm to its business by mandating the use of a marketing tool for tax information reporting purposes.

Player tracking is a customer loyalty program that is a critical marketing tool for casinos. Particularly in highly-competitive gaming markets, a central part of the casino's marketing plan is to build loyalty with customers who return again and again to the same casino. This marketing approach is mirrored across a range of other U.S. industries, from airlines to hotels, now even to hardware stores. Tracking of slot machine play allows customers to earn points that can be redeemed for complimentary food, beverages, rooms, and free play.

Mandating the use of the customer's player tracking card for tax information reporting would cause serious damage to the casino's business because of the chilling effect of associating in the customer's mind use of the loyalty card with tax tracking and collection and fear of an IRS audit, making the customers reluctant to use or sign up for loyalty cards. The gaming industry is aware of no other industry in the country for which the IRS has issued regulations requiring the industry to deploy its customer loyalty program for Federal tax collection purposes.

B. Problems Faced under Current Controls Capabilities and Back-End Systems and Technology

1. Concerns over Existing Controls Capabilities

The current electronic player tracking systems were designed for marketing purposes and hence lack the types of controls that would be necessary to ensure proper compliance with tax information reporting. The current electronic player tracking information is considered by the casino to be an unaudited estimate that is given to customers as a courtesy. In order to transform that marketing tool into a tax information reporting process, technological and business process changes would be required to create and implement the necessary controls for such a tax reporting process.

Customers are signed up for player tracking cards in a multitude of ways. Customers can sign up on-line at the casino's website or at a booth or elsewhere on the casino floor. Applications may be handed out on the casino floor. The goal is to get marketing contact information from the patron, even just a name and an email address.

As we see it, a key issue is that while the Federal tax information reporting rules require a report to a person, the casino player tracking system simply provides a report to a card.

While player's cards are issued to a specific person with a particular account number, under current technology the electronic player tracking system has no way of knowing if the person inserting the card in the slot machine is the person to whom the card was issued. In practice, players can use each other's cards, forget and leave their cards in the machine where the next player plays on it, lose the card altogether, or have multiple cards (with multiple account numbers) issued to a single person. For example, a single card can be shared among a group of family members or friends in an effort to earn comps. Casinos discourage such practices, but since the player's card is a marketing tool, the resources that would be necessary to fully police card use are better devoted to other more pressing business and regulatory purposes at the property. This intentional or inadvertent use of another player's card could result in significant inaccuracies in the wagering gains and losses reported to the player cardholder who receives a "net" Form W-2G at the end of the session under the proposed rules.

Players can insert and remove their player's cards during slot play. Some casinos have indicated that under their current slot machine technology and controls, when a jackpots occurs the slot operations employee would be unable to determine whether the player's card was in the machine at the time the jackpot was won, and so would be unable to determine if the slot play was 'electronically tracked' and includible in the daily session netting totals for a summary Form W-2G under the proposed guidance or instead should be the subject of a separate Form W-2G for that jackpot under the current rule. Other casinos have indicated that under their current technology and controls, slot personnel would have to process the jackpot and then log into their systems manually to determine whether a card had been inserted in the machine at the time of the jackpot.

Even if a card had been inserted in the machine at the time of the jackpot, under current controls, there would still be the risk that the jackpot would accrue to the wrong person for tax purposes. For example, in situations where the casino is able to determine that the person who won the jackpot was using another player's card, the jackpot nonetheless would have been electronically recorded to the customer to whom the card had been issued, not the person who actually won the jackpot. While reporting could properly be made to the winner of the jackpot by issuing a Form W-2G on the spot, any electronic session data for the person to whom the card was issued would now be invalid because such data include a jackpot won and reported to another player. Moreover, because of these limitations under current controls capabilities regarding who actually uses the card, there also would be the question of whether all of the other slot wins and losses below the $1,200 "lock-up" threshold that occurred during the session were won or lost by the person to whom the card was issued because there would be no way to verify the player's identity.

If the answer to these controls issues under a new mandatory tax reporting system based on player tracking is simply to deem or presume that all slot wins and losses associated with the card are attributable for Federal tax purposes to the person to whom the card was issued, that will magnify even further the negative effect on the customer's willingness to sign up for this customer loyalty marketing program in the first instance.

Finally, if mandatory slot reporting based upon electronic player tracking is imposed, the casino's inability under current slot technology to place sufficient controls on the use of the player tracking card will lead to more customer disputes that the amount reported by the casino to the IRS was not the proper winnings from slot play by that customer. Disputes are likely to arise regarding tracked play because of shared use of the card, issues with the machine reading the card, a player forgetting to use the card during losing games, a player leaving his or her card in the machine, or similar situations. Such disputes would undermine customer relations, harm the casino's business, and require significant additional resources to handle such matters.

2. Back-End Systems Challenges

As noted above, as a threshold matter it is very important that any new slot tax reporting rules provide sufficient flexibility to reflect the diverse types of slot operators operating in different levels of the slot gaming market with different customer profiles, cost structures, and systems. It is important also to recognize that there are in the range of half a dozen different manufacturers/software providers for casino customer loyalty card systems, with varying features, capabilities, and cost.

Implementation of the proposed mandatory slot tax reporting based on electronic player tracking would require significant upgrades to the casino's back-end systems in order to be able to generate all of the necessary session reports for customers playing slots in that session.

Under current technology and systems, the slot "accounting system" actually consists of multiple, separate systems. The slot metering system is the base system that originates at the slot machine. The slot metering system communicates with two separate systems: (1) the player tracking system (raw data) and the player management system (player accounts); and (2) the machine accounting system.

The slot metering system captures data at the machine level, such as coin in and coin out, ticket in and out, and jackpots. The focus of the slot metering system is to collect and aggregate the information from the individual slot machines, in order to report slot gaming gross revenue to the State gaming control regulatory authorities and to pay applicable State taxes on gaming revenues.

The slot metering system must communicate with the separate player tracking system in order to transfer the necessary "raw" data to the player tracking system which then determines and assembles the particular player's slot activity in the player management system. The slot metering system reports on the basis of the number of meter clicks on the slot machine, not dollar values, for each machine on which the player's card is used. This system knows only the card number. It has no identifying information for the customer. Once the player tracking system receives the machine data from the slot metering system, the player tracking system makes the necessary calculations, including translating meter clicks into the dollar value, necessary to determine and attribute the slot wins and losses to the player's account. The player tracking system then must transfer and apply the player's activity to the player's account in the player management system.

With complex systems such as these, inevitably glitches arise. An individual slot machine may experience difficulties communicating with the slot metering system or have its meter begin behaving erratically. The slot metering system, the player tracking system, or the player management system may be taken off-line for maintenance or upgrades. In such instances, the slot metering system ultimately does "catch up", but the additional data collected on this delayed basis does not necessarily transfer over to the player tracking system to ultimately adjust the player's account in the player management system. If there are any malfunctions in the slot metering system where data does not make it to the player tracking system, because of time and resource constraints, no attempts are made to update the player tracking system, which in turn means the data never reaches the customers' accounts in the player management system. As another example, a player on the high-limit slots may be playing so rapidly that communications issues arise among the slot metering system, player tracking system, and player management system, so that such play is unable to be posted to the player's account in the player management system. In this instance, a manual process must be used, such as identifying the machines played by the customer and reconstructing the player activity to manually post to the player management system account for the customer. It can take days after the particular session to seek to determine the appropriate adjustments to the player's account in the player management system. Such manual process is undertaken to validate a customer's earned points or to validate that marker activity was used for gaming purposes. More generally, this type of manual review generally occurs only when a customer expresses concern that he or she did not receive the appropriate amount of points to be used toward player loyalty rewards.

The slot metering system and machine accounting system reports for the gaming day are subject to extensive internal and external audit procedures. These reports are audited on a daily basis in a process that can take up to eight hours or more, in order to report gross gaming win for State gaming tax purposes. By contrast, the player tracking system and player management system are not subject to audit procedures and are considered by the casino to be estimates. In addition, the auditing that does go on with respect to the slot metering and machine accounting system reports occurs on an aggregate basis with respect to the total revenue realized by each machine for purposes of State gaming control and gaming tax reporting. Such audit does not reach down to the granular level of auditing and correcting individual player slot wagering data.

The casinos have indicated that the proposed mandatory reporting on the basis of electronic player tracking would require a significant investment in back-end systems development and in the hiring of additional audit personnel to perform the necessary new audit processes to prepare Form W-2Gs on a net session basis each day. Some manual audit processes would be necessary, including exception reports from the audit department to the gaming floor staff, to examine and try to resolve discrepancies in situations where not all of the necessary data has made its way from the slot metering system to the player tracking system or the player management system has incomplete customer identifying information, such as the lack of a Social Security number. Finally, the casino audit staffs have indicated that they would need to invest in a robust dispute resolution process to deal with these daily session reports for customers, particularly given the limitations of the current controls capabilities for associating the customer with the use of his or her card. This new audit burden would be on top of the approximately eight hours of auditing that already is necessary for the casino to close its books for the day in accordance with State gaming control and gaming tax requirements. In addition, the dispute resolution process could be delayed to the next gaming day, or even longer as the customer may not immediately bring his or her dispute to the attention of the casino for days. Customers may not even view their account activity for days and may not discover what they consider to be a discrepancy for days or weeks.

Under current systems and controls, to implement the proposed mandatory system based on tracking, in practical effect, all slot players using player's cards would have to be electronically tracked throughout the session because the key triggering event under the IRS's proposed new reporting scheme – the $1,200 or more reportable jackpot – could occur at any time during the session. If the reportable jackpot occurred toward the end of the session, for example, the casino's system would have to be able to reach back to capture all of the customer's slot gains and losses from earlier in the session. The back-end system would have to be made capable of running the session reports for all slot customers playing with a card during that session because only then would the casino be able to determine whether the two key elements of the IRS's proposed electronic tracking tax reporting system were met: (1) a $1,200 or more reportable jackpot at some point during the session; and (2) $1,200 or more in net slot wins during that session. Alternatively, back-end systems changes would be necessary to develop a means to seek to capture that subset of customers with both a $1,200 jackpot and $1,200 in net winnings from among the whole universe of slot customers playing during that session. Some AGA casino members have indicated that under their systems, to perform this task would require aggregating the results of numerous queries run on separate databases where the raw data are separately contained.

In short, AGA casino members have expressed concern that in order for their back-end systems to become able to compile, store, and index for retrieval a sizable number of daily win/loss statements, costly investment would be necessary in programming and in a substantial increase in the current storage and processing power of these systems. This costly investment in the necessary back-end systems changes would be magnified for those casinos that operate in multiple markets. AGA members operating in multiple jurisdictions have indicated that their slot systems and software packages often differ by jurisdiction. In that situation, these members indicate, a significant investment by the casino to modify its back-end systems in one jurisdiction would not carry over to their back-end systems in other jurisdictions.

C. Conflicting State Tax Reporting and Withholding Requirements in Some States

Some casinos operate in States which impose a gross basis withholding tax on jackpots or do not otherwise allow a netting of the customer's losses against reportable jackpots. For example, AGA members have advised that Missouri (4 percent) and Mississippi (3 percent) both impose a gross basis tax on jackpots and require that tax to be withheld at the time of the jackpot. Illinois and West Virginia do not allow taxable winnings to be offset with losses for State tax purposes, and Kansas recently repealed its itemized deduction for wagering losses.

If the proposed Federal tax reporting based on electronic player tracking is imposed on a mandatory basis, AGA members operating in these States would face the complexity and expense of having to operate two entirely different tax reporting systems – one for State and a separate one for Federal. To comply with State tax reporting and withholding, the slot machine would have to lock up for each reportable jackpot in order to verify the customer's tax reporting information, withhold State tax, and to issue a State Form W-2G on the spot for each jackpot. On the Federal side, under the proposed new mandatory player tracking reporting system, a Federal Form W-2G may or may not be issued at the end of the session depending upon the player's net situation at the end of the session, with the casino having to track the entire session for Federal purposes. The amount on the State Form W-2G would differ from the Federal Form W-2G amount. This would be a confusing situation for the customer and a burdensome arrangement for the casino.

D. Alternative Approach

We understand that the principal purpose of the proposed tax information reporting based upon electronic player tracking is to provide the IRS with third party verification – i.e., essentially, matching – when (i) a patron seeks to rely on a casino statement of play as evidence in litigation regarding the extent of gaming losses or (ii) the patron seeks to rely on the voluntary safe harbor method for reporting slot wagering wins and losses on a net per-session basis for electronically-tracked slot play under the new IRS Notice 2015-21.

While we recognize the IRS's concerns, we question the need to impose mandatory, across-the-board use of the player tracking tool for tax information reporting purposes—sweeping in all of the loyalty program members—simply to police the efforts of a limited segment of players who seek to *voluntarily* rely on the player tracking data at the customer's own initiative. Rather than causing serious harm to a critical marketing tool for the casino by mandating across-the-board use of player tracking for tax reporting purposes and creating conflicts for the casino with various State gaming tax regimes, clearly a more targeted approach is warranted here for achieving the IRS's objective.

Accordingly, AGA recommends an alternative approach to the IRS's proposed mandatory electronic player tracking process for Federal tax information reporting purposes on slot wagering gains and losses. Under this approach, a new voluntary electronic player tracking arrangement would be established for slots that is premised on four basic principles:

1. Adoption of such an electronic player tracking process for Federal tax information reporting purposes for slots would be optional for the casino.

2. Participation in such an electronic tracking process for tax reporting purposes for slots would be voluntary for the customer.

3. Customers who participate in such an electronic tracking process for tax reporting purposes for slots would be permitted to use the resulting casino reports as suitable evidence, accepted by the IRS, to substantiate slot wagering gains and losses. In exchange, the customer would agree that all slot wagering gains and losses reported by the casino to his or her player's card on a daily session basis would constitute reportable wagering gains and losses for Federal tax purposes. This would require the development of new types of controls regarding use of the card by the person to whom it had been issued.

4. Casinos choosing to utilize such an electronic tracking process for tax reporting purposes for slot patrons who sign up for tax reporting should be given sufficient lead-time to develop and implement such a new system and controls, before any new IRS tax reporting rules take effect. This would be a significant and expensive undertaking for the casino.

As we did with the Gaming Industry Tip Compliance Agreement providing for automated tax reporting on employee tips, AGA stands prepared to work with Treasury and IRS to seek to develop such a new voluntary electronic player tracking arrangement for slots that is workable for both the industry and the IRS.

E. Other Issues under Proposed Slot Reporting Guidance

1. Definition of Slot "Session" for Reporting Purposes

Under the proposed slot reporting guidance, the focus would be on a $1,200 jackpot and customer netting of slot wins and losses during a single "session". "Session" is defined under the proposed regulations as "a session of play [that] begins when a patron places the first wager on a particular type of game at a gaming establishment and ends when the patron places his or last wager on the same type of game before the end of the same calendar day at the same gaming establishment." Prop. Reg. § 1.6041-10(b)(3). A session of play "is always determined with reference to a calendar day (24-hour period from 12 a.m. through 11:59 p.m.) and ends no later than the end of that calendar day." *Id.*

AGA strongly urges that, as a technical matter, the casinos should be given the flexibility to use as the "session" for tax information reporting purposes the 24-hour period known as the "gaming day" that is used by the particular property to close out its books for the day. "Gaming days" typically end between 3 a.m. and 6 a.m. for various reasons. For example, some casinos close their facility at this time for several hours, and it is a logical breakpoint. For those casinos that remain open continuously, they find that this is the most convenient time to close out their books for the day because the casino is typically at its slowest point in terms of business, and it is easier at that time to complete manual reports and run system reports that would otherwise slow down the system. In addition, under current practice ratings for slot players are required to close at the end of the gaming day. This does not currently happen at midnight. Changing to a midnight close-out for slot player rating would require development of a technological upgrade for the slot machine and also could create systems issues for some slot systems that will have a surge of information as all active slot games on the casino floor push this information at midnight, which is typically a peak business hour especially on the weekend. Further, use of the gaming day as the reportable session period could help alleviate the number of disputes with customers on whether they won or lost during a session. This is because there are far fewer customers playing at 3-6 a.m. than at midnight, thereby lessening the chance that the customer's session would overlap two calendar day sessions and have offsetting wins and losses. Finally, use of the calendar day as the period for tax information reporting would conflict with the reporting period used for Currency Transaction Reports and Suspicious Activity Reports under the Bank Secrecy Act, which permits the reporting institution to choose the 24-hour reporting period.

In summary, we want to emphasize that requiring the casino to report on a calendar day basis will result in a significant and costly duplication of effort since all of the other reporting by the casino for financial accounting and gaming control board purposes will continue to be done on a gaming day basis.

2. Optional Aggregation of Form W-2G Reporting Method

Under the current slot tax information reporting rules, a separate Form W-2G must be prepared for each $1,200 jackpot won by the customer. The proposed slot tax reporting guidance seeks to simplify this reporting by providing an optional aggregation method for Form W-2G reporting to the same customer.

This optional aggregation method would permit the casino which pays more than one $1,200 (or more) jackpot from slots to the same payee during the same session to report the aggregate amount of these reportable $1,200 (or more) jackpots on a single Form W-2G. Prop. Reg. § 1.6041-10(h). Under this proposed approach, the casino would keep a log with the customer and a casino representative both confirming each reportable jackpot win by signing the log, noting the day and time and slot machine identification number for each reportable jackpot, the method of payment to the customer, and the total amount of reportable jackpots of $1,200 or more won by the customer during the session. In the case of electronically tracked slot machine play, the log also would have to include the total amount of slot winnings during the session from electronically tracked play and the total amount of slot wagers during the session from such tracked slot play.

For those customers playing without player tracking cards and hence falling outside of the proposed electronically tracked slot play reporting rules, AGA welcomes the ability of casinos to use this optional aggregation approach for reporting on a single Form W-2G the customer's reportable jackpots of $1,200 or more during the session. We understand that, in the past in some markets, the IRS and casinos had entered into agreements permitting the use of such a reportable jackpot aggregation approach, and that these aggregation logs proved to be a success for both the casino and the IRS in simplifying W-2G reporting for slots.

In the case of electronically tracked slot play, we are unsure as to how this manual aggregation log approach would interact with the automated electronic tracking approach contemplated under the proposed regulations where, once a single reportable $1,200 jackpot has occurred, the customer's slot wins and losses of all sizes would be netted at the end of the session to determine whether the customer had more than $1,200 in net session winnings. This proposed net session reporting approach seems mutually exclusive with the proposed manual reportable jackpot-by-jackpot approach specified under the optional aggregation method. Hence, we believe that the manual jackpot-by-jackpot aggregation method should not apply at all when there is electronic session netting.

3. Possible New Patron Safe Harbors for Other Types of Games

In Notice 2015-21, the IRS seeks comment as to whether a similar safe harbor to that set forth in the Notice for electronically tracked slot play should be developed to measure the customer's wagering wins and losses in table games and other forms of gaming. In the case of table games, the player rating for comps purposes is based on human observation of the customer's wagering activities by casino personnel. Accordingly, in addition to the concern over using a casino marketing tool for tax information reporting purposes, we would have the same type of concerns as voiced above in the slot controls discussion that this type of player rating information gathered informally through human observation does not rise to the level of data rigor necessary for use in tax information reporting.

Therefore, AGA's casino members would not be prepared at this juncture to take on the new burden of utilizing their player rating arrangements to police a new safe harbor for wagering gains and losses for table game and other games.

4. Treatment of Foreign Customers

AGA has considered whether treatment of foreign customers should be addressed in these comments. However, foreign customers present unique complexities in applying the tax information reporting and the 30-percent (or treaty-reduced) withholding requirements. Accordingly, AGA would appreciate the opportunity to further collaborate with IRS and Treasury as they focus on this area in the future.

III. Slot Reporting Threshold

A. Current $1,200 Jackpot Reporting Threshold

As the preamble to the proposed slot reporting guidance indicates, the current $1,200 threshold for reporting slot jackpots has been in place since 1977. Treasury/IRS in the preamble have inquired as to the origin of the $1,200 figure and why it was raised from the original $600 threshold level following submission of information by the casino industry to IRS at the time. AGA does not have any industry information from that period that would shed light on what transpired. We would note that, as described below, current industry experience of AGA members shows that those slot customers who are net winners at the end of the year have won the vast majority of their net slot wagering gains from jackpots of $1,200 or more.

B. Possible Reduction in Current Jackpot Threshold from $1,200 to $600

The preamble to the proposed slot reporting guidance requests comments on the feasibility of reducing the slot jackpot reporting threshold to $600 at a future time. AGA and its casino industry members would vehemently oppose any effort to reduce the slot jackpot reporting threshold below the current $1,200 level. To date, more than 9,300 gaming customers from across the country have voiced concern on the AGA website about any proposed reduction in the reporting threshold down to $600.

1. Inflation Erosion of the Current $1,200 Threshold

The current $1,200 slot jackpot reporting threshold has been in place for some 38 years. A $1,200 slot jackpot in 1977 is not the same as a $1,200 jackpot today. Because of inflation erosion over those four decades, a comparable jackpot reporting threshold today would be approximately $4,700. Now is not the time to be making matters worse by cutting the jackpot reporting threshold in half. If anything, consideration should be given to updating the current slot threshold to a higher level, such as $5,000, to address these four decades of inflationary effects.

2. Significant Increase in Slot Operations Labor Cost

Based on calculations by AGA members, a reduction in the reportable slot jackpot threshold from the current $1,200 level to $600 would result in a dramatic increase in reportable jackpots, ranging from 113 percent to 550 percent.

Such a dramatic jump in reportable jackpots would translate into a significant increase in the casino staffing levels necessary to process the jackpots in a timely manner. Slot Operations (shift manager, supervisor, floor staff, etc.) and Cage would be affected, along with Security and Surveillance, since State gaming regulation often requires a security verifier or escort for jackpots, while in other cases a surveillance review is necessary. It also would increase the time, effort, and cost of the daily casino audit operations. Additional audit staffing would be necessary to validate the completeness and accuracy of each Form W-2G and to assemble the information into the data file that is used for electronic upload of the Form 945 annual withholding filing.

Depending upon the size of the casino, AGA members have estimated based upon historical data regarding slot jackpot pay-outs that this additional labor cost for a casino, depending upon its size, would range from hundreds of thousands of dollars to more than $5 million annually in order to provide proper, timely service to the jackpot customer.

3. Significant Increase in Lost Business Revenue from Machine Downtime to Undertake Tax Reporting

As noted, the gaming industry already bears a significant labor cost and business revenue cost burden for tax information reporting on customers. We are aware of no other industry in the country that must take its assets out of production of revenue in order to fulfill its tax information reporting obligations.

This business revenue loss to the casino from having the slot machine lock up to provide for the tax information reporting would be seriously exacerbated if the number of reportable jackpots jumps on the order of 113 to 550 percent upon a reduction in the reporting threshold from $1,200 to $600. Based on the number of jackpots between $600 and $1,199, the slot machine's theoretical win per minute, and the average machine downtime for jackpot processing, AGA members have estimated that the additional business revenue loss at the casino from the threshold reduction could fall in the range of $300,000 to $600,000 or more annually, depending on the size of the casino.

4. More Paperwork Will Not Translate Into Greater Tax Collections

A flood of additional Forms W-2G to an under-budgeted and under-staffed IRS is unlikely to produce additional tax revenue collections. This is because most slot customers are in a net losing position at the end of the year. Under the Federal tax rules wagering losses are deductible only to the extent of wagering gains, and so net wagering losses cannot be used to shield unrelated income from tax. Moreover, current industry experience of AGA members shows that those slot customers who are net winners at the end of the year have won the vast majority of their net slot wagering gains from jackpots of $1,200 or more.

5. Asymmetry with State Gaming Control and Tax Thresholds

While State regulation of gaming is a patchwork quilt across the country, one common feature is the use of the $1,200 Federal reporting jackpot threshold as the threshold for machine lock-ups for jackpot verification and reporting for gaming control purposes. The $1,200 lock-up threshold is also commonly used by States in conjunction with withholding tax and reporting for State tax purposes. A reduction in the Federal reporting jackpot threshold from $1,200 to $600 would require casinos to grapple with two sets of inconsistent slot machine lock-up thresholds on the same machine – for which the technology does not now exist.

6. Conclusion: Current $1,200 Reporting Threshold Should Not Be Reduced

For all of these reasons, AGA strongly urges that the current $1,200 threshold for reportable slot jackpots should not be reduced. For these same reasons, the current $1,200 jackpot should be retained for both non-electronically tracked slot play and electronically tracked slot play, to avoid having to grapple with two sets of inconsistent slot machine lock-up thresholds on the same machine. Similarly, modestly increasing the slot threshold from the current $1,200 to the $1,500 keno threshold in order to have a uniform reporting threshold, as the IRS had queried in the preamble, would not be worth the cost and disruption of revamping the current $1,200 slot machine lock-up process and the resulting asymmetry with State gaming control and withholding tax thresholds.

IV. Conclusion

Once again, AGA appreciates this opportunity to provide these comments and looks forward to working constructively with Treasury and IRS to address the concerns we have expressed regarding the proposed slot tax information reporting guidance.

If you have any questions or would like any additional information, please contact Whitaker Askew of our staff at 202/552-2675 (WAskew@americangaming.org).

Sincerely,

G. Free

Geoff Freeman
President and CEO