

**ORDER 2013-106
IN RE SETTLEMENT AGREEMENT
GAMING ENTERTAINMENT (INDIANA), LLC
13-RR-02**

After having reviewed the attached Settlement Agreement, the Indiana Gaming Commission hereby:

APPROVED

APPROVES OR DISAPPROVES

the proposed terms of the Settlement Agreement.

IT IS SO ORDERED THIS THE 27th DAY OF JUNE, 2013.

THE INDIANA GAMING COMMISSION:



Matt Bell, Chair

ATTEST:



Marc Fine, Vice-Chair

STATE OF INDIANA

INDIANA GAMING COMMISSION

IN RE THE MATTER OF:)	
)	SETTLEMENT
GAMING ENTERTAINMENT (INDIANA) LLC)	13-RR-02
)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is between the Indiana Gaming Commission (“Commission”) by and through its Executive Director, Ernest E. Yelton, and Gaming Entertainment (Indiana), LLC (herein referred to as “Rising Star”) (collectively, the “Parties”). The Parties agree that the following statutes and regulations are applicable and that the following recitals are true:

FINDINGS OF FACT

1. Until April 14, 2013, Rising Star’s system of Internal Controls for Security and Accounting included a provision requiring a member of each respective department at the end of each gaming day to add the onboard patron count number to the beginning of the next gaming day’s ingress patron count to account for the appropriate amount of admissions tax due for each gaming day.
2. Rising Star’s procedure resulted in the onboard patron count number for a particular gaming day to be added to the next gaming day’s ingress patron count two separate times, leading to submission of an inaccurate patron count number report, and overpayment of admissions taxes.
3. From July 2012 through April 14, 2013, the inaccurate patron count number resulted in an overpayment of admissions taxes by Rising Star in the amount of Fifty Three Thousand Seven Dollars (\$53,007.00).

CONCLUSIONS OF LAW

4. As a licensed owner of a riverboat casino in Indiana, Rising Star is required to pay an admissions tax for each person admitted to the riverboat. Ind. Code § 4-33-12-1.
5. The Commission may provide for “the establishment and collection of license fees and taxes imposed under this article.” IC 4-33-4-3(a)(3).
6. Rising Star is required to make the admissions tax payments each day for the preceding day’s admissions. IC 4-33-12-4

7. Admissions procedures used and admissions taxes collected by a riverboat licensee must be carried out in compliance with the Commission's rules. 68 Ind. Admin. Code 15-6-1(b).

8. If a riverboat licensee observes twenty-four (24) hour gaming, a "patron count shall be computed at the end of each gaming day and shall include those patrons remaining on board the riverboat at the time of each new gaming day...The onboard count shall be added to the new gaming day's ingress patron count." 68 IAC 15-6-2(a)(6).

9. A riverboat licensee is responsible for ensuring that the approved patron count system in use keeps an accurate count of the patrons who enter and exit the riverboat; an "accurate count" means not less than ninety-seven percent (97%) accuracy. 68 IAC 15-6-2(a)(3).

10. Failure to comply with 68 IAC 15 may result in the initiation of a disciplinary action under 68 IAC 13. 68 IAC 15-1-6(b)

11. Settlement offers may be made at any time prior to the final disposition of an action, including prior to the initiation of any disciplinary proceedings. 68 IAC 13-1-18(a).

AGREEMENT

12. The inaccurate patron count numbers resulted in the overpayment of daily admissions taxes over an extended period of time, the Parties hereby agree to a settlement of these matters.

13. The Parties have read, understood, and voluntarily accepted the provisions of this Agreement for the purpose of making a full and final compromise and settlement of this case.

14. The Parties agree that nothing in this Agreement shall constitute an admission of any kind.

15. Rising Star agrees to revise, and in fact has already revised, its Internal Controls in order to reflect a comprehensive procedure that will result in an accurate patron count number for purposes of admission tax calculations.

16. The Commission agrees to permit Rising Star to claim credits in lieu of admission tax payments each Saturday over the course of eleven (11) weeks for a total amount equal to the total amount of overpayment, Fifty Three Thousand Seven Dollars (\$53,007.00), made by Rising Star from July 2012 to April 14, 2013. This RG-1 Schedule A Adjustment will be made every Saturday for ten (10) weeks in the amount of Five Thousand Dollars (\$5,000.00), and on the eleventh Saturday in the amount of Three Thousand Seven Dollars (\$3,007.00).

17. The Commission agrees that it will not pursue a disciplinary action against Rising Star for reporting inaccurate daily patron count numbers.

18. Rising Star waives any right to file an amended return or obtain a refund or from any state agency or department for any admissions tax overpayments related to the patron counts described in this Agreement.

19. Each party to this Agreement represents and warrants that it has legal authority to enter into this agreement; that the persons executing the agreement on behalf of each party is authorized to do so; and that the Agreement shall be binding and enforceable when duly executed and delivered to each party.

20. This Agreement shall be governed by and construed under the laws of the State of Indiana without regard to any conflict of laws principle, and this Agreement shall be construed without any presumption or rule requiring construction against the party causing the Agreement to be drafted.

21. The Parties agree that any invalidation of any part of this Agreement does not affect the remainder of the Agreement, and that no objection as to form or content shall invalidate the Agreement of the Parties entered into by the Parties.

22. The Parties agree that this Agreement constitutes the entire agreement between the Parties. No prior or subsequent understandings, agreements, or representations, oral or written, not specified or referenced within this document will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended in any manner except by written agreement signed by both Parties and approved by the Commission, if necessary.

23. This Agreement is subject to the approval of the Commission. Approval and subsequent final order by the Commission makes this Agreement a final Commission action.



Ernest E. Yelton, Executive Director
Indiana Gaming Commission

4.24.13

Date



Steven Jimenez, General Manager
Gaming Entertainment (Indiana) LLC
d/b/a Rising Star Casino

4/24/13
Date