

Luzerne County to seek hotel tax from casino for complimentary hotel rooms

Written by Administrator

Saturday, 29 September 2018 20:28 -



The Mohegan Sun Pocono casino in Plains Township will be pressed by Luzerne County to pay hotel tax on complimentary rooms, county officials say. - Times Leader file photo

Luzerne County's law and controller's offices disagree with each other over the Mohegan Sun Pocono casino's payment of hotel tax on complimentary rooms.

Controller Michelle Bednar recently released a 14-page report presenting her position that the Plains Township facility's hotel should not be taxed on these rooms.

In a seven-page response, Chief Solicitor Romilda Crocamo and Assistant Solicitor David Schwager argued the controller is incorrect on several fronts.

The matter is about to come to a head because the law office recommended the county pursue collection of unreported and unpaid taxes associated with complimentary rooms at the casino's hotel.

County Manager C. David Pedri said the administration will be proceeding with such a collection action against Mohegan Sun this week through the county treasurer's office.

Attempts to reach casino representatives about the matter were not immediately successful.

The county solicitors said the controller's position is "contrary" to the long-standing legal opinion

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of the county law office and that the controller's office did not contract with independent or temporary special legal counsel in the matter.

"Therefore, the controller's office is offering a *legal* opinion without the input, guidance, or affirmation of legal counsel," they responded in the report posted at www.luzernecounty.org

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Controller's argument

According to Bednar's report, county ordinance regulations state rooms are subject to the tax if they are occupied "for consideration," which she maintains is a key phrase meaning "for payment."

"Since no payment is exchanged in the case of complimentary rooms, we assert that complimentary rooms are not subject to the hotel tax. Furthermore, we believe that to charge hotel tax on complimentary rooms would demonstrate non-compliance with county regulations," the report said.

Mohegan Sun had paid hotel tax on all complimentary rooms for several years, it said.

However, in February 2016, the casino, on the advice of its legal counsel, started paying the tax only on complimentary rooms obtained through the use of loyalty program "Momentum Dollars."

Momentum Dollars are earned by gaming at a slot machine or table game and can then be used to buy an array of items and services, including hotel rooms and suite upgrades, it said. Frequency of play and the amount of money a patron "cycles through a machine" are among the criteria used to determine incentives offered.

The controller's office supports the continued payment of tax on the Momentum Dollar rooms

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because “there is a value associated with amounts earned that were subsequently converted to a hotel room.”

Other complimentary rooms acquired through a marketing program should not be taxed, it said, because there is no value attributed to the use of the free room.

How much money is at stake?

While not stated in the recent report, a previous controller’s office review of the Mohegan Sun hotel tax paid in 2016 sheds light on the potential money involved.

In that report, which was released in June, the controller’s office said Mohegan Sun was entitled to a \$7,323.48 refund for taxes paid on complimentary rooms for January 2016, or the month before the facility ended its practice of forwarding that money. The recommended January refund was for rooms that were not part of the Momentum Dollars program, the controller’s office said.

Of the \$199,048 in hotel tax Mohegan paid in 2016, \$3,462 was for rooms and suite upgrades purchased with Momentum Dollars, according to the report.

The controller’s office also reviewed state law and multiple regulations, policies, rulings and decisions with regard to the taxability of complimentary rooms, its report said, noting the state revenue department exempts complimentary room revenue from sales tax.

Opposing view

The law office response says there are “significant deficiencies” in the controller’s report, asserting it incorrectly defines “for consideration” as meaning “for payment.”

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"In fact, as shown in this response and existing case law and other sources, consideration need not consist of payment at all in a 'valued for money' sense of the concept," it said.

Instead, the consideration may consist of a benefit, the attorneys maintained.

"Mohegan Sun Pocono is not offering such 'gaming junkets' gratuitously but in the expectation of the guest spending or having spent resources at the property," the response stated.

The state revenue department policy was not on point because it involved sales tax, as opposed to a use tax, the response said. A New York state tax appeal decision cited in the controller's report has no precedence in this matter because it is from another jurisdiction and also applied to a sales tax, the attorneys argued.

"A thorough review of the controller's report and applicable legal review reveals a misapplication of the law and legal definitions," said the response, which formally objects to the controller's report.

Tax recipients

The hotel tax is 11 percent here. The state charges 6 percent, and another 5 percent was tacked on in the county in 1996 solely to help fund county tourism and the Mohegan Sun Arena in Wilkes-Barre Township.

While the casino purchased naming rights for the arena, the facility is operated by a county authority appointed by county council.

The arena receives 80 percent of the hotel tax, which amounted to \$2.29 million in 2017, county records show. In comparison, the tax generated \$572,826 for the county Convention and Visitors Bureau. The county treasurer's office receives 2 percent to administer the program, which amounted to \$58,452 in 2017.

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Pedri commended Bednar and her office for identifying and working on the issue of taxing complimentary rooms.

“While we disagree with her final opinion, her office brought attention to this matter, which will benefit the citizens of Luzerne County,” Pedri said.



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Law Office seeks to collect; county controller disagrees

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