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[Third Party Communication:

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From: [REDACTED]

Sent: Wednesday, June 26, 2024 11:33:48 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: TSS Assign: ITG Withholding Issue - POSTU-102663-24

Hello [REDACTED],

We have heard back from our colleagues in Employment Tax and have incorporated their response into our analysis below. Under these circumstances, we do not object to applying a gaming business day rather than a calendar day for deposit purposes because it will not result in a delay in depositing the withholding as required under the rules.

Under Treas. Reg. § 31.3402(q)-1(c)(5)(i), gambling winnings subject to withholding are generally treated as if they are wages paid by an employer to an employee. Publication 15, (Circular E), Employer's Tax Guide, sets forth the rules for how employers must deposit federal income tax withheld and both the employer and employee social security and Medicare taxes. There are two deposit schedules, monthly and semi-weekly. These schedules tell an employer when a deposit is due after a tax liability arises. It is our understanding that if

deposits every day at the end of their business day, they would be voluntarily depositing withholding earlier than their previous semi-weekly deposit schedule for non-payroll withholding tax.

The rules also provide that if an employer accumulates \$100,000 or more in taxes on any day during a monthly or semi-weekly deposit period, the employer must deposit the tax by the next business day. This is called the "\$100,000 Next-Day Deposit Rule" and is described in section 11 of Pub. 15. Penalties apply if employers don't make required deposits on time pursuant to these rules, or if deposits are made for less than the required amount.

Pub. 15 does not explicitly permit the use of an alternative timeframe, such as a gaming day, when applying the \$100,000 Next-Day Deposit Rule. Such a rule would potentially postpone employer liability for income tax withholding if cash wages have been paid or made available to an employee on a calendar day, but not deposited by the next business day. However, the use of the term "business day" suggests employers could use something other than a calendar day when making their required deposits by the

next business day. Further, because [REDACTED] has agreed to deposit every gaming day, the new schedule is likely to result in earlier depositing of any withholding, when considered in its totality, compared to regular calendar day reporting.

For the above reasons, we do not object to the casino's use of a gaming day for deposit purposes in this instance. Please let us know if you have any follow-up questions.

Best regards,

[REDACTED]

[REDACTED]