

# Op-Ed/Editorials - Casinos As Spies For The Federal Government

February 21, 2001

Professor I. Nelson Rose,  
Whittier Law School,  
Costa Mesa, CA.

The following Notice has not been approved by any government official. (In fact, some of them would probably be unhappy to see this warning published.)

## **WARNING TO ALL CASINO PATRONS:**

If you win big, are a high roller, or do anything that a casino or the government regards as suspicious, you will be reported to the U.S. Treasury Department's Financial Crimes Enforcement Network, commonly known as FinCEN. The information will be made available to the IRS and your local law enforcement agency. Expect your taxes to be audited. If you are ever involved in a messy lawsuit, your opponent may be able to obtain some of this information by subpoena, to show, for example, how much cash you used for gambling. The casino will not always tell you when it files these reports; in fact, under some circumstances, it is not allowed to let you know that you have been reported to FinCEN.

Scary, isn't it?

All businesses are supposed to report cash transactions over \$10,000. But only "financial institutions" are required to file detailed reports and have compliance programs in place to make sure the reports get filed. And only "financial institutions" have to report "suspicious activities" involving more than \$3,000 to FinCEN.

It may come as a surprise to most players and even executives in the gaming industry that large casinos and card clubs have been defined as "financial institutions." It will certainly be a shock to most players to learn that they may be the subject of secret reports filed by casinos with the federal government.

All casinos and card clubs with gross annual gaming revenues in excess of \$1

million must file Currency Transactions Reports (CTRs) with the federal government every time a player has a cash transaction of more than \$10,000. This includes players using currency to buy chips, deposit front money, pay off markers, make large wagers or collect large winning bets.

The last is particularly interesting, because the original purpose of CTRs was to track crooks who were using casinos for money laundering, like a drug dealer who bought gaming chips with \$25,000 in small bills, made a few token bets, and then asked for a cashier's check for his remaining chips.

In the mid-1980s Nevada officials, including its then-powerful Republican senators, convinced the federal government that there was no need for casinos to file CTRs when the cash was paid by casinos themselves. Nevada enacted Regulation 6A, which required casinos to file CTRs only with the state, and only for transactions that might conceivably involve dirty money, like cash buy-ins or marker payments.

But Nevada gaming officials, apparently at the request of the federal government, changed the rules in 1997. All currency transactions of more than \$10,000, even slot jackpots paid out in cash, now have to be reported. And today CTRs are filed with the IRS, not with the state.

The U.S. Congress, which is supposedly the body that actually makes the laws, had established complicated rules for withholding taxes of gambling winnings, but only under special circumstances. For example, a sports book has to withhold 28 percent of the amount won, but only if it is more than \$5,000 and at least 300 times as large as the amount bet.

For years the IRS has gone further by requiring casinos to report big wins at bingo, slot machines and keno, even though no money was withheld for taxes.

Today, a CTR must be filed on every patron who cashes out for more than \$10,000 in currency -no matter what the game and even if the player has lost money gambling.

The regulations also used to require that casinos obtain identification from the player before filing a CTR.

Today, a casino does not have to ask for a player's i.d. if it already has the patron's name, address and similar information. This eases the casinos' workload and prevents disruptions. But it also means high-rollers do not have to be told

when the casino files CTRs with the IRS.

The reason for the changes is simple: The Treasury Department has admitted that one of its primary goals is to go after untaxed cash transactions that have nothing to do with money laundering.

But Treasury still wants to catch drug dealers. So, it has taken the next step: "Suspicious Activity Reports - Casinos" or SARCs, to be filed with FinCEN.

As this is being written, only Nevada casinos have to file SARCs, although FinCEN intends to require all casinos and card clubs to report suspicious activities.

What exactly is a "suspicious activity"?

The amount does not have to be more than \$10,000; a total of \$3,000 or less can trigger a report. Nor does it have to involve any currency.

FinCEN likes to say the standard is "know your patron." But the actual regulation is more vague, including phrases like a casino employee "has reason to suspect" that the transaction "has no business or apparent lawful purpose."

Casinos face large fines if they fail to report suspicious transactions, and they cannot be sued for filing SARCs when players were doing nothing wrong. So, when in doubt, casinos will err on the side of filing reports on their patrons.

It is against the law for a casino to tell a player that it has reported his suspicious activity to FinCEN.

This might catch more crooks. But it is hard to picture casino executives as secret police.