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Comparative Analysis of Revenue Sharing Compacts Between States and Indian Tribes

A thesis submitted in partial fulfillment of the requirements for the degree of

BACHELOR OF SCIENCE IN BUSINESS ADMINISTRATION, ACCOUNTING AND THE HONORS PROGRAM

by

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Abstract

A compact is required between a State and a Tribe if a Tribe wishes to operate a Class III, Nevada style, casino. Class III gaming has proven to be the most profitable type of gaming. As a result, the numbers of compacts between States and Tribes have increased over the years to allow Tribes to profit from Class III gaming.

In negotiating compacts, the Tribes cede revenues to the State in return for gaming exclusively. In addition, the use of terms such as the definition of “net win” on which revenue sharing is commonly based defers across compacts.

The main purpose of this study is to assess revenue sharing in State-Tribe compacts. It attempts to identify differences in revenue sharing in compacts negotiated between the States and the Tribes. To achieve this objective, aggregate data from twenty-four different States are used, because those are the only States with compacts. The examination of the compacts showed that the revenue sharing agreements differ in the negotiated compacts is each State.
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Chapter 1

Introduction

Chapter 1 provides background information for the study. It includes the history of Native American casinos and the importance of IGRA. This chapter also includes the purpose of this study, limitations of the study, and the contribution of the study. This chapter also includes the thesis question: what are the different ways in which Tribal governments share their revenue with the State and the local governments, and how do these methods differ across the United States of America?

Background of the study

The U.S. Constitution recognizes four sovereign nations: Foreign Countries, the Federal Government, States and Tribes. Although Indian Tribes do not have the sovereign status of a foreign nation, they are recognized as having retained vestiges of native sovereignty. The sovereign status of Indian Tribes was documented in Cherokee Nation v. Georgia, 1831. In the case, the court recognized the sovereign status of Native Americans, although they were domestic nations dependent on the Federal government. The unique nature of their relationship to both Federal and State governments was acknowledged in the well-known case of Worcester v. Georgia. This case established that within the boundary of an Indian reservation, Congress was recognized to have complete authority and State law did not apply. Native Americans are subject to the same privileges and responsibilities as other citizens of the United States under Federal law.

Prior to the 1970s, the economic conditions of Native American Tribes were
unsettled. The main sources of revenue were agriculture and natural resources. During that time, Native American Tribes were heavily reliant on Federal funding. In the late 1970s, the Federal government started giving more responsibility to the reservation government. During that time, Indian Tribes opened tobacco businesses using the tax exemption status on Indian reservation lands to attract non-Indian customers. However, in 1980 the Supreme Court ruled that sales tax should be imposed on non-Indian smokers. This decision took away the competitive advantage of tobacco sales from the Tribes (Confederated Tribes of Colville Indian Reservation v. Washington, 1980).

After the Colville Indian case, the Native American Tribes started investing in gaming operations. Starting in 1979, a number of Tribes started opening gaming facilities in conjunction with operating tobacco businesses. Most of the early gaming sites were bingo parlors. Gaming sites created a conflict between Tribe and State governments (Fletcher, 2012). The State governments argued that gaming operations were in violation of State laws because gambling was prohibited in the States; however, the State law authorized State lotteries as a form of Class II gaming. The Seminole Tribe of Florida led the movement into the gaming sector in the late 1970s by opening bingo halls and offering stakes higher than those permitted at non-Indian establishments in Florida. Florida immediately sued to enjoin the Tribe, and the case was ultimately resolved in the Tribe’s favor. The Supreme Court found that the relevant question was whether bingo was prohibited in Florida. If bingo was banned, then the State could have acted to prevent gaming on Indian lands. Since Florida allowed charitable bingo at the time, then bingo was regulated within the State (Seminole Tribe of Florida v. Butterworth County, 1981).
At that time, only five other States prohibited gaming, which gave Indian Tribes a vast deal of latitude to expand their gaming. The Tribes wanted to move beyond bingo to card games and slot machines.

Ultimately in 1987, the U.S. Supreme Court case of *California v. Cabazon Band of Mission Indians* became the turning point for Indian casinos. The Cabazon Band, a small Tribe in California, argued that its status as a sovereign nation prevented State interference in its affairs (Light, 2007). This case decided that only the Federal government had the authority to prohibit gaming on Indian reservations. The U.S. Supreme Court ruled in favor of the Indian Tribes and granted them the right to open Indian casinos on reservation lands (Cabazon Band of Mission Indians v. California, 1987).

In 1988, after the *Cabazon* case, Congress formally recognized, but limited the rights of Native Americans to conduct gaming operations, with the passage of the Indian Gaming Regulatory Act (“IGRA”). The major purpose of IGRA was “to provide a statutory foundation for Indian gambling operations as a means of promoting economic development, self-sufficiency and strong Tribal government” (IGRA 2702(1), 1987). The other purposes of IGRA were to assure that Tribal governments would be primary owners and beneficiaries of reservation gaming programs; to establish federal regulatory authority and gaming standards; to establish the National Indian Gaming Commission (NIGC); and to assure the integrity of Tribal gaming (IGRA 2702 (3), 1987). States lobbied vigorously for IGRA and the compacting provision over Tribal objections.

IGRA identified three classes of gaming. Class I gaming consisted of traditional
Tribal games and “social games” for prizes of nominal value, all of which are subject solely to Tribal regulation (IGRA 2703 (6), 1987). Class II consisted of bingo, instant bingo, lotto, punch cards and other similar games as well as manual card games, legal anywhere in the State and not played against the house (IGRA 2703 (7), 1987). A Tribe can conduct or license and regulate Class II gaming only if “a State that permits such gaming for any purpose by any person” and is not prohibited by Federal law (IGRA 2710 (a), 1987). Class III consisted of all other games including slots, card games played against the house such as blackjack, pari-mutuel racing and jai alai (IGRA 2703 (7), 1987). Class III games are conducted or licensed by a Tribe in a State that permits such gaming for any purpose or any person (IGRA 2710 (d)(3)(C), 1987).

The conditions for legal operation of Class III gaming were set by IGRA. Under IGRA, Indian Tribes must negotiate a compact with the State for a specific Tribe so they could operate Class III games. As mentioned in IGRA, "The compact may contain any subjects directly related to the operation of gaming activities...in the absence of a compact regarding Class III gaming, no extension of State jurisdiction or application of State laws to Indian gaming is permitted" (IGRA 2710 (d)(3)(C), 1987). To operate Class III gaming, IGRA requires that each Tribe enact Tribal gaming ordinances that are approved by the NIGC chairman before opening a gaming operation. Tribal gaming ordinances set the terms for gaming operations such as types of gaming and so forth. Tribal gaming ordinances also define the use of gaming revenue. Under IGRA, the Tribe can share their net revenue from any gaming to five categories (IGRA 2710 (b) (2) (B), 1987):
i) Fund Tribal government operations and programs

ii) Provide for the general welfare of Indian Tribe and its members

iii) Promote Tribal economic development

iv) Donate to charitable organizations

v) Help operation of local government agencies

According to IGRA, the Tribes also have an option to share their revenue with the Tribal members (IGRA 2710 (b) (3), 1987). About one-third of the Tribes share their gaming revenue by paying a per capita payment to the Tribal members (NIGC, 2012). To share their revenue with the Tribal members, the Tribe must have a Revenue Allocation Plan (RAP), approved by the Secretary of the Interior (IGRA 2710 (b) (3), 1987). RAP is a document prepared by a Tribe that describes how the Tribe will allocate net gaming revenues. IGRA also stipulates that States cannot tax net income of Indian casinos (IGRA 2710 (d)(4), 1987).

By requiring Tribes to form compacts with States prior to operating Class III gaming facilities, Congress established means by which the States and the Tribes can come to an agreement regarding the parameters under which such gaming would take place on reservations (IGRA 2711 (c), 1987). The compacting process allowed the State to raise concerns for gaming, security, and organized crime anti-infiltration measures. While States often received compensation for licensing or for other oversight costs, a number of compacts also entailed additional sums be paid to the State.

IGRA explicitly prohibits States from using compact negotiations to demand State taxation of Tribal gaming. The Secretary of the Interior has to approve compact terms that require Tribes to make payments to the State in exchange for “economic benefits”
Typically, States promise to let Tribes maintain some level of exclusivity over casino-style gaming through State law; for example, the Mashantucket Pequot in Connecticut agreed to pay 25% of gross slot machine revenue to the State in exchange for the exclusive right to operate slot machines (Compacts, 2012).

IGRA also states that the compacts, especially revenue sharing agreements, should be negotiated in “good faith” (IGRA 2710(d)(3)(A), 1987). If a State refused to negotiate in “good faith,” the Tribe could take the State to District or Federal court and either force negotiations or ask the Department of the Interior to promulgate a compact for the Tribe. In 2010, Rincon Band, a Tribe in California, tried to amend its compact to expand its gaming facilities; the Governor of California, Schwarzenegger, offered a deal that was heavily tilted in the State’s favor. The only “concession” offered by the State was a promise that the Rincon Band would not have to compete with non-Tribal casinos, a guarantee the State already provided in Proposition 1A. The District Court observed the fairness principle and ruled in favor of the Rincon Band (Rincon Band of Luiseno Indians v. Schwarzenegger, 2010). The State tried to receive a higher percentage of net revenue, in return for a meaningless exchange. “Good faith” negotiations are necessary when dealing with revenue sharing agreements. If the Tribe decides to share a percentage of its revenue with the State, the State should provide a meaningful exchange.

Revenue-sharing agreements are becoming a regular subject of negotiations in Tribal-State compacts, especially in the State-dominated political environment. In 2010, State and local governments received more than two billion dollars in direct payments from Tribes under revenue-sharing agreements (NIGC, 2012). Growth in revenue-sharing
payments outpaced growth in Tribal gaming revenue. Therefore, the questions that arise from this research are what are the different ways in which Tribal governments share their revenue with the States and the local governments and how do those chosen methods of sharing differ from other methods?

**Purpose of the Study**

The purpose of the study is to assess the revenue sharing in State-Tribe compacts. It attempts to identify trends in State-Tribe compacts, and especially revenue sharing. Compacts within twenty-four States will be compared, because those are the only States that have State-Tribe compacts. The study compares the methods and definitions in different compacts. Furthermore, this study investigates gaming tax for commercial casinos versus revenue sharing in Indian casinos. Finally, revenue sharing and gaming tax of the casinos are compared in different regions of the United States.

**Limitation of the Study**

This research study is limited to the Native American Tribes and commercial casinos. For the purpose of this study, online gambling, riverboat casinos, state lottery, and “racinos” are ignored. In chapter 4, the revenue sharing agreements are limited to the States that include a revenue sharing agreement.

**Contribution of the study**

The results of this study may help investors, regulators and gaming managers to understand the current status and future of revenue sharing in Indian casinos. The analysis may also lead to some suggestions for States revenue sharing agreements.
Chapter 2

Native American Casinos

Introduction

Chapter 2 provides information on the number of Tribal gaming sites and casinos in each of the four regions of the United States of America broken down into States, together with the number of compacts indicating class III activity, and comments.

Tribal Casinos in Region 1

Region 1, also known as the Northeast Region of the United States, includes the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, and New Jersey (Census Regions And Division, 2012). As mentioned in Table 1.1, in Region 1 there are only two States that allow Tribal gaming. Connecticut has negotiated two State-Tribal compacts, and it has two of the biggest casinos in the United States. The Foxwood Casino on the Mashantucket Pequot reservation is the largest casino in the United States and third largest in the world. New York has eight gaming sites, three of which are bingo parlors. There are three compacted Tribes in New York (Gaming Compacts, 2012).

Table 1.1: Region 1 gaming facilities and compacts

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Tribal Casinos</th>
<th>Number of Compacts</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>2</td>
<td>2</td>
<td>Largest casino in the United States</td>
</tr>
<tr>
<td>New York</td>
<td>8</td>
<td>3</td>
<td>3 out of 8 are bingo parlors, and 5 Class III gaming</td>
</tr>
</tbody>
</table>
Tribal Casinos in Region 2

Region 2, also known as the Midwest, consists of Wisconsin, Michigan, Illinois, Indiana, Ohio, Missouri, North Dakota, Nebraska, Kansas, Minnesota, and Iowa (Census Regions And Division, 2012). As shown in table 1.2, there are a total of 116 gaming facilities on reservations. Michigan, Minnesota and Wisconsin have the highest numbers of Native American casinos. Michigan, Wisconsin and Minnesota have eleven State-Tribe compacts each (Gaming Compacts, 2012).

Table 1.2: Region 2 gaming facilities and compacts

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Tribal Gaming Facilities</th>
<th>Number of Compacts</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wisconsin</td>
<td>29</td>
<td>11</td>
<td>26 casinos and 3 bingo parlors in 11 Tribes</td>
</tr>
<tr>
<td>Michigan</td>
<td>24</td>
<td>11</td>
<td>23 casinos and 1 bingo parlor in 11 Tribes</td>
</tr>
<tr>
<td>Missouri</td>
<td>2</td>
<td>1</td>
<td>2 casinos in 1 Tribe</td>
</tr>
<tr>
<td>North Dakota</td>
<td>6</td>
<td>5</td>
<td>6 casinos in 5 Tribes</td>
</tr>
<tr>
<td>Nebraska</td>
<td>4</td>
<td>3</td>
<td>Only Class II gaming</td>
</tr>
<tr>
<td>Kansas</td>
<td>4</td>
<td>4</td>
<td>1 casinos each Tribe</td>
</tr>
<tr>
<td>Minnesota</td>
<td>21</td>
<td>11</td>
<td>18 casinos and 20 bingo parlors</td>
</tr>
<tr>
<td>Iowa</td>
<td>1</td>
<td>1</td>
<td>Use to have 3 casinos, but only 1 still exists</td>
</tr>
</tbody>
</table>

Tribal Casinos in Region 3

Region 3, also known as the South, is the biggest Region in the United States. It consists of sixteen States: Delaware, Maryland, Virginia, West Virginia, North
Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Mississippi, Alabama, Oklahoma, Texas, Arkansas, and Louisiana (Census Regions And Division, 2012). As shown in Table 1.3, there are a total of 134 gaming facilities in Region 3. Oklahoma has the highest number of casinos and it has thirty-three State-Tribal compacts. In Florida, seven out of eight casinos are on a single Tribe’s reservation land. Most of the other Tribes in Region 3 have only Class II gaming facilities (Gaming Compacts, 2012).

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Tribal Gaming Facilities</th>
<th>Number of Compacts</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delaware</td>
<td>1</td>
<td>0</td>
<td>Class II gaming only</td>
</tr>
<tr>
<td>Alabama</td>
<td>3</td>
<td>0</td>
<td>Class II gaming</td>
</tr>
<tr>
<td>Florida</td>
<td>8</td>
<td>1</td>
<td>1 Class II gaming and 7 casinos</td>
</tr>
<tr>
<td>Louisiana</td>
<td>3</td>
<td>3</td>
<td>Only allowed one casino per Tribe</td>
</tr>
<tr>
<td>Mississippi</td>
<td>3</td>
<td>1</td>
<td>2 out of 3 are bingo parlors.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>2</td>
<td>1</td>
<td>Only 1 Tribe has Class III gaming</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>113</td>
<td>33</td>
<td>Highest number of casinos</td>
</tr>
<tr>
<td>Texas</td>
<td>1</td>
<td>0</td>
<td>Class II gaming, but performed as Class III style</td>
</tr>
</tbody>
</table>

Tribal Casinos in Region 4

Region 4, also known as the West, is made up of thirteen States. Those States are Alaska, Arizona, California, Idaho, Colorado, Montana, Nevada, New Mexico, Utah, Washington, Wyoming, Hawaii, and Oregon (Census Regions And Division, 2012). Region 4 has the highest number of Tribal casinos. As shown in table 1.4, there are a total of 202 gaming facilities in Region 4 reservation lands. California has seventy gaming facilities.
facilities, of which fifty-two are Class III casinos. There are sixty-five compacts between the State and Tribes; however, thirteen of them are non-gaming compacts. Non-gaming compacts are negotiated compacts between State-Tribes for future casino expansions. Arizona has twenty-five gaming facilities, with twenty-one State-Tribal compacts. In Washington, there are thirty-four gaming facilities, but only eleven State-Tribal compacts. There are six Tribes with Class II gaming in Washington. New Mexico has twenty-four gaming facilities and twenty-two of them are Class III gaming; there are fourteen compacts between the State and Tribes (Gaming Compacts, 2012).

Table 1.4: Region 4 gaming facilities and compacts

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Tribal Gaming Facilities</th>
<th>Number of Compacts</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>2</td>
<td>0</td>
<td>Class II gaming only</td>
</tr>
<tr>
<td>Arizona</td>
<td>25</td>
<td>21</td>
<td>Only 15 are Class III and 6 Tribes are without casinos but with compacts.</td>
</tr>
<tr>
<td>California</td>
<td>70</td>
<td>65</td>
<td>13 of 65 compacts are non-gaming compacts</td>
</tr>
<tr>
<td>Idaho</td>
<td>8</td>
<td>4</td>
<td>Each Tribe has two casinos</td>
</tr>
<tr>
<td>Montana</td>
<td>13</td>
<td>6</td>
<td>Each Tribe has two casinos, 1 has Class II gaming</td>
</tr>
<tr>
<td>Nevada</td>
<td>3</td>
<td>2</td>
<td>One Tribe has two casinos</td>
</tr>
<tr>
<td>New Mexico</td>
<td>24</td>
<td>14</td>
<td>22 out of 24 are Class III gaming, rest are Class II</td>
</tr>
<tr>
<td>Washington</td>
<td>34</td>
<td>11</td>
<td>28 out of 34 are Class III gaming.</td>
</tr>
<tr>
<td>Wyoming</td>
<td>4</td>
<td>2</td>
<td>Each Tribe has 2 casinos</td>
</tr>
</tbody>
</table>
Not all States have Indian Casinos. There are only twenty-eight states that operate Tribal gaming facilities. Out of the twenty-eight States, only twenty-four have Class III gaming. Some states have Class II and Class III gaming.

Chapter 3

Methodology

Introduction

This chapter presents the methodology used in this study. This chapter consists of three parts: research objectives, data collection and research method.

Research objectives

The primary research objective of this study is to assess the State-Tribe compacts in twenty-four States allowing Class III gaming. Furthermore, this study investigates revenue sharing agreements in different compacts. The first objective of the study is to find all the States that have compacts with the Native American Tribes. The second objective is to examine the different compacts for revenue sharing agreements. The third objective is to compare a revenue sharing agreement with other revenue sharing agreements. The fourth objective is to compare the revenue sharing agreement with the State gaming tax on commercial casinos.

These objectives will be achieved by collecting data on compacts, interpreting the collected data and comparatively analyzing these findings using the research method that is described later in this chapter.

| Oregon | 9 | 9 | 1 casino is allowed per Tribe |
Data Collection

The data being examined in this study is secondary in nature; the different compacts that were being collected were found on the NIGC website. The NIGC has recorded all the latest compacts by State.

There are twenty-four States that are used in the comparison. All of the States used in this study have Class III gaming facilities. The twelve States that are reported within this research are because those are the only States that have revenue sharing sections in their compacts. The other twelve States’ Tribes do not share their revenue with the States. Other States are eliminated because they allow only Class II gaming in their Tribes.

In analyzing State-Tribe compacts, this study focuses on two main aspects: first, a comparison between the State-Tribe compacts, and second, a comparison between the revenue sharing of the compacts with the gaming tax on commercial casinos. Some of the States, like California, New Mexico and Arizona, also provide a model compact for the State, which was discovered on the States’ gaming commission websites. The models were used to compare the overall compacts of different States. Other data collected from the NIGC website were laws and regulations that Indian Tribes have to follow in order to set a compact.

Research Method

The researcher used the archival method to analyze the data that has been collected by someone else. After the data is collected, researchers use that data to perform specific research on a specific topic. In this study, all the compacts collected are then compared with other collected compacts, in order to; find the differences/similarities in
the revenue sharing agreements of those compacts.

Chapter 4

Revenue Sharing in Different States

Introduction

Chapter 4 focuses on revenue sharing in different State-Tribe compacts. It includes the States that have revenue-sharing agreements in their compacts. It provides information on the method each State uses and how much percentage or fixed amount they share with the State or Local governments.

Arizona

By the early 1990s, several Arizona Tribes had installed slot machines in their casinos even though none of them had Tribal-State gaming compacts with the State. Arizona started signing compacts after the NIGC required the Tribes to have compacts with the State to operate Class III gaming. The first compact was signed in 1993 (History of Indian Gaming in Arizona, 2012).

In 2002, a coalition of Arizona Tribes successfully obtained passage of Proposition 202, whereby the State was authorized to enter into gaming compacts with individual Tribes. The compacts allowed the expansion of Tribal gaming devices as well as pari-mutuel wagering. In exchange, Tribes agreed to share a portion of the gaming revenues with the State, counties, cities and towns.

According to the compact of 2003, Tribes contributed a percentage of their Class III net win for each fiscal year. Class III net win is defined as “gross gaming revenue,
which is the difference between gaming wins and losses, before deducting costs and expenses” (Compacts, 2012). The Tribes contributions of net win as shown in table 2.1.

**Table 2.1: Contribution of net win in Arizona State-Tribe compact**

<table>
<thead>
<tr>
<th>Percent of net win</th>
<th>Amount of net win</th>
</tr>
</thead>
<tbody>
<tr>
<td>1%</td>
<td>$0-$25 million</td>
</tr>
<tr>
<td>3%</td>
<td>$25 million - $75 million</td>
</tr>
<tr>
<td>6%</td>
<td>$75 million - $100 million</td>
</tr>
<tr>
<td>8%</td>
<td>$100 million and above</td>
</tr>
</tbody>
</table>

88% of the annual contribution of net win is made to the Arizona Benefits Fund established by Arizona Revised Statutes section 5-601.02 (H). The Arizona Benefit Fund is administered by the State Gaming Agency. In the compact, the State agrees that the Arizona Benefit Fund will be used for the purpose of administering the contributions made by the Tribe to the State. 9% or eight million dollars from the Arizona Benefits Fund is for the Department’s administrative and regulatory expenses. 2% from the Arizona Benefit Fund is for problem gambling. The remaining 88% of the contribution to the Arizona Benefit Fund is transferred to the Instructional Improvements Fund, Trauma and Emergency Fund, Wildlife Conservation Fund, and Tourism Fund (Compacts, 2012).

The other 12% of Tribes’ total annual contributions of net win can go towards the distribution to cities, towns or counties for government services that benefit the general public, including public safety, and the mitigation of impacts of gaming. The state can also use the contribution towards the promotion of commerce and economic development or deposit to the Commerce and Economic Development Commission Local Communities Fund (Compacts, 2012).

In exchange for the contributions, the Tribes enjoy a monopoly in gambling. Arizona law states that only Tribes can operate gaming devices and without limitations
on the number of gaming devices per gaming facility. However, if State law permits any form of Class III gaming outside the Tribal lands, the Tribes’ obligation to make contributions to the State is immediately reduced to 0.75% of its Class III net win (Compacts, 2012).

California

In 1999, California’s Governor Davis negotiated Tribal-State compacts with nearly sixty tribes, allowing Nevada-style gambling and legalizing video slot machines with a limit on the number of devices they can operate. Currently, most of the Tribes still operate under the 1999 compact. The Tribes are also required to make payment to the Revenue Sharing Trust Fund (RSTF). The RSTF should maintain an amount of one million one thousand dollars each year for the non-gaming Tribes. The compact has been interpreted by the Tribes to mean that a Tribes’ first 350 gaming devices do not have to be licensed (Compacts, 2012). Table 2.2 shows the fees that apply to licensed gaming devices.

Table 2.2: Fees to licensed gaming devices in California 1999 State-Tribe Compact

<table>
<thead>
<tr>
<th>Fees Per Device</th>
<th>Licensed gaming devices</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>1-350</td>
</tr>
<tr>
<td>$900</td>
<td>351-750</td>
</tr>
<tr>
<td>$1,950</td>
<td>751-1,250</td>
</tr>
<tr>
<td>$4,350</td>
<td>1,251-2,000</td>
</tr>
</tbody>
</table>

The Tribes are also required to make payment to the Special Distribution Fund (SDF) based on the number of gaming devices and on their net win (About the Commission, 2012). Net win is defined, in the 1999 State-Tribe compact, as the difference between gaming wins and losses before deducting costs and expenses.
Table: 2.3 Payments to the Special Distribution Fund under 1999 Compact

<table>
<thead>
<tr>
<th>Percentage of net win</th>
<th>Number of devices</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>0-200</td>
</tr>
<tr>
<td>7%</td>
<td>201-500</td>
</tr>
<tr>
<td>10%</td>
<td>500-1,000</td>
</tr>
<tr>
<td>13%</td>
<td>More than 1,000</td>
</tr>
</tbody>
</table>

Revenues in the SDF may be appropriated by the legislature (1) to make grants for programs to address gambling addiction; (2) to support impacted State and local government agencies; (3) to compensate State regulatory costs; (4) to make up shortfalls in the RSTF, or (5) for other purposes as determined by the legislature (California Gaming Control Commission, 2012). Compact Tribes are to be consulted during the process of determining grants to local governments.

In 2004, the State negotiated compacts with two Tribes and five other Tribes amended their 1999 compacts. According to the new compacts made or amended in 2004, the Tribes in California have no limit on the number of gaming devices (Compacts in California, 2012). The following compacts explain the revenue sharing in two Tribes that amended their compact in 2004.

   a. If the Tribe generates less than thirty million dollars a year in net win and operates 750 or less gaming devices, there will be annual fees per device. The annual fee per devices is mentioned in table 2.4.

Table 2.4: Annual fee per device

<table>
<thead>
<tr>
<th>Number of devices</th>
<th>Fee per Device</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-250 devices</td>
<td>$4,600</td>
</tr>
<tr>
<td>251-500 devices</td>
<td>$4,800</td>
</tr>
</tbody>
</table>
b. If the Tribe operates more than 750 gaming devices or earns over thirty million dollars a year, they will pay the State a percentage of its annual net win, as shown in table 2.5.

**Table 2.5: Percentage of annual net win**

<table>
<thead>
<tr>
<th>Amount of net win</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0-$50 million</td>
<td>12%</td>
</tr>
<tr>
<td>Over $50 to $100 million</td>
<td>15%</td>
</tr>
<tr>
<td>Over $100 to $150 million</td>
<td>18%</td>
</tr>
<tr>
<td>Over $150 to $200 million</td>
<td>22%</td>
</tr>
<tr>
<td>Over $200 million</td>
<td>25%</td>
</tr>
</tbody>
</table>

c. There was a significant change in the definition of net win. The new definition of net win is “gross revenue less all prices, payouts, and participation fees made to gaming resource supplier to lease gaming devices”. Participation fees were not included in the 1999 compacts.

d. If the Tribe earns over fifty million dollars in net win, in any year, it will also pay into the RSTF, nine hundred per gaming device for the number of devices from 1,100 to 2,000 (Compacts, 2012).

2. **Fort Mojave Indian Tribe**

a. As long as the Tribe has over 1,000 members, its payment of net win (similar definition as Coyote Valley) to the State is based on schedule show in table 2.6.
Table 2.6: Percentage of annual net win

<table>
<thead>
<tr>
<th>Amount of net win</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0-$50 million</td>
<td>10 %</td>
</tr>
<tr>
<td>Over $50 to $100 million</td>
<td>14 %</td>
</tr>
<tr>
<td>Over $100 to $150 million</td>
<td>18 %</td>
</tr>
<tr>
<td>Over $150 to $200 million</td>
<td>22 %</td>
</tr>
<tr>
<td>Over $200 million</td>
<td>25 %</td>
</tr>
</tbody>
</table>

b. The Tribe agrees to share a percentage of net win based on the number of members in the Tribe, as in table 2.7

Table 2.7: Percentage of net win based on membership

<table>
<thead>
<tr>
<th>Membership</th>
<th>Net Win</th>
<th>Percentage of Net Win</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 500</td>
<td>$50,000,000</td>
<td>12 %</td>
</tr>
<tr>
<td>500-1000</td>
<td>$50,000,000</td>
<td>10 %</td>
</tr>
<tr>
<td></td>
<td>$50,000,000-$100,000,000</td>
<td>15 %</td>
</tr>
</tbody>
</table>

c. If the Tribe earns over twenty five million in net win in any year, it will pay into the RSTF nine hundred dollars per gaming device for the number of devices from 701 to 1,000 and one thousand nine hundred fifty per device for 1101-1500 gaming devices (Compacts, 2012).

Five Tribes amended their compacts with the State in 2004. The following explains the new revenue sharing agreements between the State and the Tribes:

- The Tribes are not required to make payments to the SDF. Payments to maintain Tribes’ existing licenses to operate gaming devices are $500,000 quarterly, paid into the RSTF.

- The definition of net win has also changed from the 1999 compacts. The new definition is, “gross revenue less all prizes and payouts, fills, hopper adjustments and participation fees made to gaming resource supplier to
lease gaming devices.” The participation fees were not included in the
1999 compacts.

- The Tribes may operate additional gaming devices already in operation,
  by paying the State additional fees.

- In addition, the Tribes agree to make payments to the State for 18 years to
  securitize bonds authorized by AB687 (Nunez), chapter 91, Statutes of
  2004. AB687 authorizes the bank to sell for the State all or any portion of
  the State’s compact assets to a special purpose trust, which would be
  established as a non-profit corporation. The sales are limited to an amount
  necessary to provide the State with net proceeds of the sale not to exceed
  one billion five hundred million dollars. If the bonds cannot be issued, the
  payments are made to the State (Simmons, 2010).

  - Rumsey Band of Wintus Indian: $100,000,000
  - Pala Band of Mission: $ 18,860,000
  - Pauma Band of Luiseño Mission Indians of the Pauma &
    Yuima Reservations: $5,750,000
  - United Auburn Indian Community: $33,800,000
  - Viejas Band of Kumeyaay Indians: $17,400,000

- After 18 years, and until the end of the amended compact on December
  31, 2030, the Tribes will continue to make the same annual payment or
  10% of the annual net win from the number of additional gaming devices.
  The California Gaming Control Commission (“CGCC”) may audit the net
  win calculation (Simmons, 2010).
- Rumsey Band of Wintus Indians: $25,000,000
- Pala Band of Mission Indians: $18,860,000
- Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservations: $5,750,000
- United Auburn Indian Community: $33,800,000
- Viejas Band of Kumeyaay Indians: $17,400,000

Four Tribes amended their 1999 negotiated compacts with the State in 2006. In the new compact of 2006, the Tribe and State agree on the following terms:

- The Tribes agree to pay the State fixed annual payments on its existing gaming devices (Simmons, 2010):
  - Morongo Band of Mission Indians: $36,700,000
  - Pechanga Band of Luiseno Indians: $42,500,000
  - Agua Caliente Band of Cahuilla Indians: $23,400,000
  - San Manuel Band of Mission Indians: $45,000,000

- The Tribes also agree to make an annual payment, made quarterly, for the operation of up to 5,500 additional gaming devices: 15% of the net win generated by up to 3,000 gaming devices, and 25% of the net win generated from the operation of over 3,000 to 5,500 additional gaming devices. Only, Agua Caliente Band of Cahuilla Indian makes an annual payment of 15% of the net win from all gaming devices over the existing 2000 devices (Simmons, 2010).

- Net win is defined as gross revenue from all Class III gaming devices less all prizes, fills, hopper adjustments, payouts and participation fees for
leasing gaming devices.

- All the Tribes also agree to make $2,000,000 annual payment to the RSTF (Simmons, 2010).

In exchange for these contributions, the Tribes enjoy the exclusive right to operate gaming devices within the geographic region. The Tribes are authorized under the 2004 and 2006 California State compact to an unlimited number of Class III gaming devices per gaming facility. However, if State law changes to permit another person or entity to operate any kind or form of Class III gaming, the Tribes’ obligation to make contributions to the State is suspended.

Connecticut

The Pequot negotiated the first compact with the State of Connecticut in 1993. It gave them the exclusive right to operate slot machines in return for a monthly contribution to the State of 25% of gross slot machine revenue. Slot machine revenue is defined as, “the total sum wagered less amounts paid out as prizes.” However, when the second Connecticut Tribe, the Mohegans, won Federal recognition and decided to open a casino, the Pequot renegotiated their revenue sharing agreement with the State. Now, both Tribes have identical agreements with the State.

Currently, both Tribes contribute 25% of gross slot machine revenue monthly to the State. If either Tribe’s contribution falls below eighty million dollars in any year, its percentage increases to 30% in order to ensure a combined one hundred sixty million dollar minimum annual contribution to the State. The amount is credited to the Office of Policy and Management under the General Fund (Compacts, 2012).
Florida

In Florida, there is only one Tribe, known as the Seminole Tribe, which offers Class III gaming in its casinos. Before 2010, the Seminole Tribe only offered Class II gaming and did not have any revenue sharing agreement with the State. The Class III compact permits the Tribe to offer slot machines, raffles and drawing, and any other new game authorized for any purpose (History of Gambling in Florida, 2007).

According to the State-Tribe compact, during the initial period, the Tribe agreed to pay the State a revenue share payment in the amount of twelve million five hundred thousand dollars per month through the end of the initial period. Initial period means the first twenty-four months of the compact starting on April 7, 2010 (Compacts, 2012).

After the initial period, the Tribe agrees to pay each year the greater of the percentage revenue sharing amount or the guaranteed minimum payments. Percentage revenue sharing amount is based on percentage of net win, which is the total receipts from the play of all covered gaming, less all prize payouts and free play or promotional credits issued by the Tribe. Percentage revenue share amount is calculated in table 2.8:

<table>
<thead>
<tr>
<th>Percentage of net win</th>
<th>Net win received by the Tribe from the operation and play of Class III games</th>
</tr>
</thead>
<tbody>
<tr>
<td>12%</td>
<td>$0-$2 billion</td>
</tr>
<tr>
<td>15%</td>
<td>$2 billion - $3 billion</td>
</tr>
<tr>
<td>17%</td>
<td>$3 billion - $3.5 billion</td>
</tr>
<tr>
<td>20%</td>
<td>$3.5 billion - $4 billion</td>
</tr>
<tr>
<td>22.5 %</td>
<td>$4 billion - $4.5 billion</td>
</tr>
<tr>
<td>25%</td>
<td>$4.5 billion and above</td>
</tr>
</tbody>
</table>

In the guaranteed minimum payments, the Tribe pays one hundred fifty million dollars in each of the two years of the initial period and a minimum payment of two
hundred thirty-three million dollars for each first and second revenue sharing cycles and two hundred thirty-four million dollars for the third revenue sharing cycle (Compacts, 2012).

In exchange for revenue sharing, the State of Florida provides the Tribe with partial but substantial exclusivity. The State has given permission to the Tribe to convert 80% of its Class II video bingo terminals to Class III slot machines. The Tribe has agreed that it would not purchase or lease any new Class II video bingo terminals for use at its facilities after April 7, 2010 (Compacts, 2012).

**Idaho**

In Idaho, casinos operations contributed 1.5-2% of net revenue to the local government to used for local government programs, hospitals, education or other purposes as directed by the Council (Compacts, 2012).

In 2003, the Idaho State government and the Tribes made an amendment to the Compact. In the new Compact, the Tribes agreed to contribute 5% of its annual net gaming income for the support of local educational programs and schools on or near the reservation. In exchange, the Tribes gained a monopoly in Class III gaming (Compacts, 2012).

**Kansas**

In the Kansas State and Tribe compact, the Tribes agreed that certain related costs of the operation of the Class III gaming facility may be paid for from the operating revenue of the Tribal facility. The total amount of cost is unknown. However, such costs are limited to the cost of increased police patrol and necessary road improvements in Kansas (Compacts, 2012).
In 1993, seven compacts were signed between the State and Tribes. In the first compacts, the Tribes agreed to share their revenue with the local governments. In 1999 the compacts were amended, and the Tribes agreed to share their revenue with the State and the local government (History of Gaming in Michigan, 2012).

Payments to the Michigan Strategic Fund are equal to 8% of the net win of slot machines. Net win is defined as “the total amount wagered on each electronic game of chance, minus the total amount paid to players for winning wager at such machines” (Compacts, 2012).

The Tribes also make semi-annual payments to the treasurer for the county. Payment is equal to 2% of the net win from slot machines. One-eighth of the aggregated payment is paid to local public safety organizations for public safety purposes. The rest of the payment is allocated to an additional portion of payments to local government to offset the Class III costs incurred by local government (Compacts, 2012).

A newly Federally recognized Tribe opened a gaming facility in 2006. According to the new compact, the payments to the local government are similar to the 1999 compact. However, the payments to the State have changed. The payments are shown in table 2.9.

<table>
<thead>
<tr>
<th>Percentage of Net Win</th>
<th>Net Win</th>
</tr>
</thead>
<tbody>
<tr>
<td>8%</td>
<td>$0-$150 million</td>
</tr>
<tr>
<td>10%</td>
<td>$150 million-$300 million</td>
</tr>
<tr>
<td>12%</td>
<td>$300 million and above</td>
</tr>
</tbody>
</table>

(Compacts, 2012)

Under the new compact, the Tribe enjoys the economic benefit of exclusivity as
mentioned in the 1999 compacts. Both the local and the State payments are due semi-
annually based on the Tribes’ fiscal year under the 1999 and 2006 compacts. As long as
the State does not allow any commercial casino games except the casinos in the City of
Detroit pursuant to the Initiated Law of 1996, (MCL 432.201), the Tribes will continue to
make semi-annual payments to the State (Compacts, 2012).

Missouri

In Missouri, the Tribes provide a base amount of two hundred fifty thousand
dollars ($250,000) each year in matching funds to be used for advertising and promotion
of tourism. The Tribes’ payment per year is paid in quarterly installments to the State
government. The State is not required to provide anything in exchange because the
revenue is being used for Tribal improvement (Compacts, 2006).

New Mexico

In New Mexico, the Tribes pay the State a portion of its Class III gaming revenue;
in return the State agrees that the Tribes will have the exclusive right within the State to
conduct all types of Class III gaming. The Tribes make the quarterly payments to the
State Treasurer for deposit into the General Fund of the State (Compacts, 2012).

In the New Mexico State-Tribe compact, net win means, “the total amount
wagered in Class III gaming at a gaming facility, on all gaming machines less the amount
paid out in prizes, including the cost to the Tribes of noncash prizes, won on gaming
machines; amount paid to the State for the costs the State incurs in carrying out any
functions authorized in the compact; and the sum of the two hundred seventy-five
thousand dollars per year as amount representing the Tribal regulatory costs” (Compacts,
2012).
The amount payable by the Tribes to the State is equal to 8% of the net win. If the total net win in a calendar year is less than twelve million dollars, the amount then payable by the Tribes is equal to 3% of the first four million dollars of net win, and 8% of the rest of the net win for the year. If the State believes that the total net win for the calendar year is less than twelve million dollars, it may base its payment on the first four million dollars; however, if the net win exceeds their expectations, then Tribes pay the additional amount due on the first payment plus 10% interest with its next quarterly payment (Compacts, 2012).

In the compact, the Tribes agree to make payments only if they receive exclusive rights of Class III gaming in exchange. The State is not allowed to have any form of Class III gaming other than the State lottery and horse racing (Compacts, 2012).

New York

In New York, the Tribes also agree to make payments for the exclusive rights of Class III gaming. The payments are based on the net drop of Class III machines. Net drop is the gross money wagered after payout but before any expenses. The payments are made on a different basis as shown in table 2.10 (Compacts, 2012).

Table 2.10: Percentage of net drop share based on years

<table>
<thead>
<tr>
<th>Years</th>
<th>Percentage of net drop</th>
<th>Payment Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>18%</td>
<td>Annually</td>
</tr>
<tr>
<td>5-7</td>
<td>22%</td>
<td>Semi-annually</td>
</tr>
<tr>
<td>8-14</td>
<td>25%</td>
<td>Quarterly</td>
</tr>
</tbody>
</table>

As long as the State does not permit any operation of Class III gaming or
commercial casino games by any other person, the Tribes will continue to make payments to the State (Compacts, 2012).

Oklahoma

Oklahoma has the highest number of Indian casinos in the United States. Before 2004, the Oklahoma Tribes did not share any revenue with the State. The new compacts in 2004 included revenue sharing, and in exchange the State provided the Tribes with substantial exclusivity (Compacts, 2012). The payments that are made annually to the Treasurer of the State of Oklahoma are based on adjusted gross revenue from Class III. In the Oklahoma-Tribe compact, adjusted gross revenue means, “the total receipts received from the play of all Class III gaming minus all prize payouts” (Compacts, 2012). The payments are shown in table 2.11.

Table 2.11: Percentage of adjusted gross revenue shared with Oklahoma

<table>
<thead>
<tr>
<th>Percentage of adjusted gross revenue</th>
<th>Adjusted gross revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>4%</td>
<td>$0-$10 million</td>
</tr>
<tr>
<td>5%</td>
<td>$10 million -$20 million</td>
</tr>
<tr>
<td>6%</td>
<td>$20 million and above</td>
</tr>
</tbody>
</table>

In the compact, the State agrees that it will not permit any non-Tribal operation of any machines or devices of Class III gaming. If the State allows a non-Tribal entity to operate within the State, then the Tribes will discontinue their payments to the State (Compacts, 2012).
Wisconsin

In Wisconsin, the Tribes were not required to pay any payments to the State in the original compact created in 1992. In 1999, the State and the Tribes made amendments. Unlike other State-Tribe compacts, the Wisconsin Tribes make fixed amount payments to the State. The fixed amount paid to the Wisconsin State for next five years is stated in table 2.11.

Table 2.11: The flat amount paid to Wisconsin

<table>
<thead>
<tr>
<th>Years</th>
<th>Fixed amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$6,500,000</td>
</tr>
<tr>
<td>2-3</td>
<td>$7,500,000</td>
</tr>
<tr>
<td>4-5</td>
<td>$8,000,000</td>
</tr>
</tbody>
</table>

(Compacts, 2012)

The Tribes agreed to share their revenue to the State in exchange for exclusivity rights of gambling in the State. If the State permits non-Indian person(s) to operate gaming in the State, the Tribes will discontinue their payments to the State.

Chapter 5

Gaming Tax in Commercial Casinos

Introduction

Chapter 5 provides the list of States with commercial casinos in the United States. There are thirteen States that allow commercial gambling. All commercial casinos are required to pay a gaming tax. There are three different types of gaming tax: a tax per gambling device (for example a flat tax on each slot machine), a tax on the casino's net cash winnings (referred to as a "graduated tax"), and a tax paid on each person entering the casino (American Gaming Association, 2007).
States with Commercial Casinos

Commercial casinos offer a range of games banked by the casino, in that the casino acts as a participant in the game and has a stake in winning. Some commercial casinos operate Class III gaming in Tribal casinos. Table 3.1 shows all the states with commercial casinos. Nevada has the highest number of commercial casinos in the United States (State of the State, 2011).

Table 3.1: States with commercial casinos in the United States.

<table>
<thead>
<tr>
<th>States with commercial casinos</th>
<th>Number of Casinos</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>40</td>
</tr>
<tr>
<td>Illinois</td>
<td>9</td>
</tr>
<tr>
<td>Indiana</td>
<td>13</td>
</tr>
<tr>
<td>Iowa</td>
<td>17</td>
</tr>
<tr>
<td>Kansas</td>
<td>1</td>
</tr>
<tr>
<td>Louisiana</td>
<td>18</td>
</tr>
<tr>
<td>Michigan</td>
<td>3</td>
</tr>
<tr>
<td>Mississippi</td>
<td>30</td>
</tr>
<tr>
<td>Missouri</td>
<td>12</td>
</tr>
<tr>
<td>Nevada</td>
<td>260</td>
</tr>
<tr>
<td>New Jersey</td>
<td>11</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>9</td>
</tr>
<tr>
<td>South Dakota</td>
<td>35</td>
</tr>
</tbody>
</table>

(State of the State, 2011)

Gaming Tax

Unlike Native American casinos, commercial casinos are required to pay a gaming tax to the State. Each State has a different gaming tax percentage. In 2010, U.S. commercial casinos paid approximately ($4,580,000,000) in tax revenues to State and local governments (State of the State, 2011). From 2009 to 2011, tax revenues from commercial casinos declined by 0.18 % (State of the State, 2011). Nevada has the highest gaming revenue with the lowest gaming tax rate. Table 3.2 below sets out different gaming tax percentages in the different States.
Table 3.2: Gaming tax rate in different States

<table>
<thead>
<tr>
<th>Gaming Revenue &amp; Taxes 2009</th>
<th>Gaming Revenue</th>
<th>Gaming Tax Revenue</th>
<th>State Gaming Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>$759.61 million</td>
<td>$107.02 million</td>
<td>Graduated tax rate with a maximum tax of 20% on gaming revenue</td>
</tr>
<tr>
<td>Illinois</td>
<td>$1.374 billion</td>
<td>$466.07 million</td>
<td>Graduated tax rate from 15% to 20% of gross gaming revenues</td>
</tr>
<tr>
<td>Indiana</td>
<td>$2.794 billion</td>
<td>$874.86 million</td>
<td>Graduated tax rate from 15% to 40% of gross gaming revenues</td>
</tr>
<tr>
<td>Iowa</td>
<td>$1.368 billion</td>
<td>$305.44 million</td>
<td>Graduated tax rate with a maximum of up to 22% on gross gaming revenue for land-based casinos</td>
</tr>
<tr>
<td>Kansas</td>
<td>$37.79 million</td>
<td>$9.48 million</td>
<td>22% State tax; 3% local government tax; 2% to fund treatment for gambling problems</td>
</tr>
<tr>
<td>Louisiana</td>
<td>$2.374 billion</td>
<td>$571.96 million</td>
<td>$60 million annual tax or 21.5% of gross gaming revenue, whichever is greater.</td>
</tr>
<tr>
<td>Michigan</td>
<td>$1.378 billion</td>
<td>$311.41 million</td>
<td>19% on gross gaming revenues (10.9% to the City of Detroit and 8.1% to State of Michigan).</td>
</tr>
<tr>
<td>Mississippi</td>
<td>$2.390 billion</td>
<td>$285.47 million</td>
<td>Graduated tax of 8% on gaming revenues; up to 4% additional tax may be imposed by local governments</td>
</tr>
<tr>
<td>Missouri</td>
<td>$1.788 billion</td>
<td>$486.06 million</td>
<td>21% tax on gross gaming revenue</td>
</tr>
<tr>
<td>Nevada</td>
<td>$10.405 billion</td>
<td>$835.42 million</td>
<td>Graduated tax rate with a maximum tax of 6.75% on gross gaming revenues, additional fees and levies may be imposed by governmental entities</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$3.565 billion</td>
<td>$305.50 million</td>
<td>8% tax on gross gaming revenue, plus a community investment alternative obligation of 1.25% of gross gaming revenue or an investment alternative 2.5% on gross gaming revenue</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$2.486 billion</td>
<td>$1.328 million</td>
<td>34% on gross revenue for State gaming fund</td>
</tr>
<tr>
<td>South Dakota</td>
<td>$106.19 million</td>
<td>$17.22 million</td>
<td>9% tax on gross gaming revenue; gaming device tax of $2,000 per machine per year</td>
</tr>
</tbody>
</table>

(Tax Payments- Commercial Casinos, 2011)
Table 3.2 explains that the graduated tax rates vary by in state. All the States have different gaming taxes. All the states pay gaming tax on the gross gaming revenue. As shown in the table, some states pay local tax or county tax.

**Chapter 6**

**Results**

**Introduction**

Chapter 6 compares the revenue sharing in the different States and also compares the gaming tax in commercial casinos with the revenue sharing from the Tribal ones.

**Differences and Similarities in Revenue Sharing**

As the study shows, revenue sharing is different in each State. There are twelve States that have a revenue sharing agreement in their compacts, but all are different from each other.

The first difference in revenue sharing is the type of payment. Nine out of twelve State-Tribe compacts base their revenue sharing on a percentage of net win. The other three make a fixed amount payment to the States. Some State-Tribe compacts such as California have two payments: one based on their net win and the other on a fixed amount. Usually, if the Tribe has two payments, the payment based on net win is bigger than the fixed payment made by the Tribe.

The second difference in revenue sharing is the percentage of net win. Nine out of twelve Tribes share their revenue with the State, and all have different percentages. The Pequot Tribe of Connecticut has decided to share 25% of its net win. Idaho’s Tribes share
only 5% of their net wins with the State. In most States, percentages of net win increases as net win amounts increases. However, some State-Tribe compacts have a fixed percentage, which does not fluctuate with net win amount. The graph 1.1 below shows the highest percentages of net revenue that Tribes have agreed to share with the State.

**Graph 1.1: Revenue sharing in different States**

![Revenue Sharing in different States](image)

The third, and the biggest, difference in the revenue sharing is the definition of net win. Under the American Institute of Certified Public Accountants (AICPA), net win is defined as the difference between the amount wagered and the prizes paid. Nine out of twelve Native American Tribes share their revenue based on their net win. Net win plays a crucial role in identifying the revenue sharing agreement. Different definitions of Net win in State-Tribe compacts are as follows:

- **Arizona**: Gross gaming revenue, which is the difference between gaming wins and losses, before deducting costs and expenses.
- **California**: Gross gaming revenue less all prices, payouts, and participation fees for the leased machines (in 2004 and 2006 State-Tribe compacts).
- **Connecticut**: Total sum wagered less amounts paid out as prizes.
• Florida: Total receipts from the play of all Class III games less all prizes payouts and free play or promotional credits issued by the Tribes.

• Idaho: Net revenue from all Class III gaming less any costs and expenses for Class III gaming.

• Michigan: Total amount wagered on each slot machine, minus the total amount paid to players for winning wagers.

• New Mexico: Total amount wagered in Class III gaming less the amount paid out in prizes, including the cost to the Tribe of noncash prizes; amount paid to the State for the costs the State incurs in carrying out any functions in the compact and Tribal regulatory cost.

• New York: Gross money wagered, after payout but before any expenses.

• Oklahoma: Adjusted gross revenue means the total receipts received from Class III play minus all prize payouts.

Some of the State-Tribe compacts follow the AICPA definition of net win and then deduct any other extra costs the Tribes are allowed to deduct. The Tribes are required to define net win within their compacts if they are sharing their revenue based on net win with the State. For instance, New Mexico and Idaho reduced costs and expenses of Class III gaming from the net win. Under the 2004 and 2006 State compacts, all the California Tribes are allowed to deduct participation cost from net win because the Tribes lease the slot machines instead of buy them. In New Mexico, the Tribes are allowed to deduct regulatory costs and the noncash prizes. Florida Tribe deducts the cost of free play and promotional credits from the net win. Net win definitions in some State-Tribe compacts start with either gross revenue or total wagered
amount and then deduct any extra costs. Even if the State does not follow the AICPA definition, it always deducts the costs of all prizes paid out, except Idaho. Net win is the base for the revenue sharing in nine Tribes. It is essential for the Tribes to define net win because it is the foundation for the revenues that are received by the State. The States cannot collect and account for revenue sharing contribution; and analyze the reports submitted by the Tribes without knowing the definition of net win.

There is one similarity between the State-Tribe revenue sharing agreements: all the Tribes in a State have similar compacts except California. All the State-Tribe compacts in a State have the same percentage of net win and the same definition of net win in their revenue sharing agreements, except California. In California, the new compacts are Tribe specific. Those compacts differ on percentages of net, and the number of extra payments to the State.

Gaming Tax and Revenue Sharing

Commercial gaming is different from Tribal gaming. Commercial gaming is controlled by the State and is required to pay a gaming tax. On the other hand, the States cannot tax Indian Tribes under IGRA. The biggest difference between gaming tax and revenue sharing is that revenue sharing in exchanged for exclusive rights while gaming tax is required by the State. In the State-Tribal compacts, if the State decides to allow commercial gaming in the State, the Tribes can stop paying their share of revenue to the State. Commercial casinos still have to pay the gaming tax even when the competition is increasing in the surrounding areas. In 2010, Indian Tribes paid two billion four hundred million dollars in revenue sharing (NIGC, 2012), while commercial casinos paid four
billion five hundred eighty million dollars in gaming tax revenue to the State, as shown in Graph 1.2 (State of the State, 2011).

**Graph 1.2: Gaming tax and revenue sharing in 2010**

<table>
<thead>
<tr>
<th>Amount paid in Billions</th>
<th>Commerical Casinos</th>
<th>Indian Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$4.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$3.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$2.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In addition to the gaming tax, commercial casinos are also required to pay income tax, while Indian Tribes are not required to pay taxes on the income generated by the Indian casinos. The gaming tax rate paid by the commercial casinos and the revenue sharing percentages of net win in the State-Tribe compacts are compared below in the four regions. The graduated tax rate of gross gaming revenue and the revenue sharing percentages are compared based on fifty million dollars.

The Graph 1.3 depicts that there are two States that allow Native American gaming and two States allow commercial casinos in Region 1. Connecticut and New York have revenue sharing agreements, and Pennsylvania and New Jersey casinos pay a gaming tax to the States.
Graph 1.3: Revenue sharing and gaming tax in Region 1

Graph 1.4 shows that seven States have either revenue sharing agreements or pay gaming tax to the State in Region 2. Michigan has Native American casinos and commercial casinos. Michigan pays nineteen percent as a graduated gaming tax and eight percent to the City of Detroit. Wisconsin has revenue sharing agreements; however, they are based on a flat amount instead of the percentage of the net win. Kansas also has Indian casinos but pay flat rate to the State government. Gaming tax revenue is definitely higher than revenue sharing in Region 2.

Graph 1.4: Revenue sharing and gaming tax in Region 2
Graph 1.5 shows that two states in Region 3 have revenue sharing agreements and one that pays gaming tax to the State.

**Graph 1.5: Revenue sharing and gaming tax in Region 3**

![Graph 1.5: Revenue sharing and gaming tax in Region 3](image)

In Region 4, California, New Mexico, Arizona and Idaho share their revenue with the State and local governments, as shown in Graph 1.6. California, New Mexico and Arizona have large numbers of Native American casinos. Nevada and Colorado have commercial casinos and are required to pay gaming tax.

**Graph 1.6: Revenue sharing and gaming tax in Region 4**

![Graph 1.6: Revenue sharing and gaming tax in Region 4](image)

The gaming tax and revenue sharing percentage varies by State. The Tribes in Connecticut have decided to share 25% of their net win with the State, and the Tribes
have received a meaningful exchange in return. On the other hand, casinos in States, like Indiana and Pennsylvania, pay graduate gaming tax higher than 25% of their gross gaming revenue. Gross gaming revenue is defined as “the amount wagered minus the winning returned to players”. All the States with commercial gaming have the same definition of gross gaming revenue. Some of the Tribes, as mentioned above, deduct extra cost from their gross gaming revenue.

Conclusion

The questions that were asked in the beginning of this research were:

• What are the different ways in which Tribal governments choose to share their revenue with the State and the local government?

• How do those methods differ from other Tribal-State compacts?

The different ways that Tribal governments share their revenue with the State are either a percentage of net win or a fixed amount. The graduated gaming tax always has to be a percentage. Some States require additional fees with the gaming tax percentage. Nine out of twelve State-Tribal compacts use percentage of net win for revenue sharing. The chosen methods are different in the percentages of net win and the definitions of net win. If the States have chosen the fixed amount method, the amount varies by each State.

Comparing the revenue sharing agreements in this manner may lead to further detailed research by researchers from State governments, NIGC member and individual Tribes. This research may be helpful to the States and Tribes that are in process or will negotiate compacts.
Citations


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