

6. Tax Advantages of Tribal Businesses

Recommendation

1. Washington policymakers should review the relationship between the state and tribal businesses, especially in new areas of commerce and on non-tribal lands.

Background

For decades, tribal businesses (including casinos, hotels and other businesses) have benefited from a system of rules and regulations that gives the owners of these businesses a significant competitive advantage over non-tribal Americans. Whether in the form of fewer restrictive regulations such as unemployment insurance, business and occupation taxes, or workers compensation taxes, many tribal businesses are able to take advantage of the reduced regulatory environment. Nowhere is this exemplified more than in the gaming industry.

There are 29 federally recognized tribes in Washington. Twenty-two tribes operate casinos, which together generated \$1.3 billion in gross revenue in 2005.²¹

In Washington, state and local governments are specifically prohibited by federal law from taxing any aspect of tribal gaming, whether it is a business and occupation tax on operations, or sales and use taxes for equipment. Also, no taxes are allowed on tribal gaming itself.

In 1988, Congress passed the Indian Gaming Regulatory Act prohibiting states from taxing tribal gaming revenues. However, tribes sometime negotiate a voluntary revenue-sharing agreement with states. This allows tribal leaders to mute public criticism about unequal tax treatment among businesses without giving up a valuable tax exemption.

Some tribal businesses also make impact mitigation payments to local governments to help cover the cost of community services. Unlike regular taxes paid by other citizens, however, these payments are voluntary, and the amount is negotiated between the tribal business owners and local governments.

Also, tribal business owners only make revenue-sharing and impact mitigation payments *after* their businesses have made a clear profit. In contrast, non-tribal business owners must pay the state business and operating tax whether they make a profit or not.

Policy Analysis

Non-tribal card rooms and mini-casinos are subject to the full array of business taxes: sales tax on food and beverages, business and occupation tax, sales tax on construction and equipment purchases, etc. Additionally, local governments can levy a tax of up to 20 percent on gross receipts from gambling. Actual rates range from 5 to 20 percent. More than half of local jurisdictions that tax non-tribal card rooms impose a tax rate of 10 or 11 percent.

The federal Indian Gaming Regulatory Act not only specifically prohibits states from imposing taxes on casino operations, but also on non-tribal businesses that operate gambling businesses on behalf of tribes or that supply casinos with goods and services.

Right now, tribal businesses are technically responsible for tobacco taxes but can avoid paying them fairly easily. Tribal members do not pay the tax on cigarettes if they assemble cigarettes on tribal lands. And when tribal businesses stretch the rules in their favor, most state and local officials are reluctant to press the matter out of fear of being called racist or insensitive to the discrimination American Indians suffered in the past.

Some tribes are moving beyond their traditional core business of operating casinos and game rooms and branching out into other industries. Proposals for future tribal businesses include selling gasoline without collecting the 31 cents-per-gallon state gas tax, operating hotels and shopping malls without collecting state taxes, and opening a tax-exempt oil refinery to produce even cheaper gas for non-tribal consumers.

Two tribes, the Squaxin and the Swinomish, recently won a case in U.S. District Court (Judge Thomas Zilly) allowing them to keep revenue from gas taxes rather than forward them to the state.²² Other Washington tribes could assert the same right and use part of the additional profits to lower the price they charge drivers at the pump.

The Puyallup Tribe, for example, owns a deep-water port in Tacoma, the former site of the Emerald Queen Casino. The Tribe is planning to accept tax-free overseas trade, which could significantly undercut the volume of international trade that currently goes to the ports of Seattle and Tacoma.

Comparison of Washington state regulations and taxes that apply to tribal businesses and non-tribal businesses		
	Tribal Businesses	Non-Tribal Businesses
Subject to smoking ban	No	Yes
Subject to 1964 Civil Rights Act	No	Yes
Subject to voter-passed initiatives	No	Yes
Must pay gaming taxes	No	Yes
Must pay B&O tax	No	Yes
Must pay sales tax	No	Yes
Must pay tobacco tax	No	Yes
Must pay workers' comp. taxes	No	Yes
Must pay unemploy. tax	No	Yes
May offer slots	Yes	No
May offer keno	Yes	No
May offer craps	Yes	No
May offer roulette	Yes	No
May offer baccarat	Yes	No
Betting limit	\$500	\$100

Recommendation

1) Washington policymakers should review the relationship between the state and tribal businesses, especially in new areas of commerce and on non-tribal lands. Policymakers should request a study to measure the economic impact of tax-free tribal businesses on non-tribal businesses. An objective assessment is needed to determine whether the special tax and regulatory treatment granted to tribal businesses is exceeding its intended purpose.

Additional Resources

Washington Policy Center Research

“Tax Freedom Day Highlights Government Encroachment,” by Colin McGowan, May 2006.

“Relying on Sin Taxes Reveals the Contradictions in the State Budget,” by John Barnes, June 2005.

“New Research Shows Voter-Passed Property Tax Limitation is Working,” 2005.

“Property Tax Limitation in Washington State,” by Paul Guppy, August 2003.

“The Economic Case Against an Income Tax in Washington State,” by David G. Tuerck, John S. Barrett, Sorin Codreanu, May 2003.

“A Policy Guide for Budget Reform: Strategies for Improving State Government Services and Reducing the Deficit,” by Eric Montague, January 2003.

“Guiding Principles of a Fair and Effective Tax System,” by Paul Guppy, January 2002.

“An Overview of Referendum 51,” by Eric Montague, September 2002.

“State Income Taxes Increase Government Spending and Reduce Personal Income Growth,” by Eric Montague, June 2002.

Other Resources

Tax Foundation - This national think tank provides detailed analysis of local and national tax policy, calculating Tax Freedom Day each year. www.taxfoundation.org.

Streamlined Sales Tax Project - This project will allow states to charge sales tax on purchases from out of state. www.streamlinedsalestax.org.

"The Internet Tax Solution: Tax Competition, not Tax Collusion," by Adam D. Thierer and Veronique de Rugy, Cato Institute, October 23, 2003. www.cato.org.

Washington Tax Structure Study Committee Final Report: Tax Alternatives for Washington State," Washington State Department of Revenue, November 2002.

"The Indian Gaming Regulatory Act and the Rights of States," Dr. John Hill, Alabama Policy Institute, April 2005.

"A Tough Bet, Non-Tribal Casinos Have the Deck Stacked Against Them," by Alexis Nepomuceno, *Washington Business Monthly*, Association of Washington Business, March 2006.

"Indian Guide to Washington State Excise Taxes," Department of Revenue – Washington State, 2004.

"Untaxed and Lightly Regulated," Washington Research Council, November 14, 2002.

"Washington's Cardroom Industry: A Fragile Recovery," Washington Research Council, November 29, 1999.

¹ The text in this section is adapted from: "Principles of Sound Tax Policy," by Dan Mitchell, Heritage Foundation, Washington, D.C., November 2001, "Guiding Principles of Taxation," Tax Policy and Research, Montana Department of Revenue, October 2001, and "Some Underlying Principles of



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