

7. Tax Advantages of Tribal Businesses

Recommendations

1. State leaders should negotiate an agreement with tribal casino owners so that a portion of Indian gambling profits are paid into the state general fund in lieu of taxes, as is common in other states.
2. Policymakers should set up a review of the relationship between the state and tribal businesses, especially in new areas of commerce, like gas stations, in which tribes compete against non-Indian citizens.

Background

For decades, tribal businesses (including casinos and hotels) have benefited from a system of rules that gives Indians significant business advantages over non-tribal citizens. Whether in the form of exemptions from unemployment insurance, business and occupation taxes, or workers' compensation taxes, tribal businesses are able to take advantage of a reduced regulatory environment. Nowhere is this exemplified more than in the gaming industry.

In Washington there are 29 federally recognized Indian tribes. These tribes operate 28 casinos, which together generated \$1.95 billion in gross revenue in 2011.²⁴

The total combined membership of the 29 tribes in the state is just over 61,500 people, or 0.009% of the people in the state. Some tribes have as few as 200 members, while the largest has more than 10,000.²⁵ Tribal membership is defined as the certified number of people who are officially recognized by tribal leadership, based on their racial identity.

Who is an Indian?

There is no legal definition of who is an American Indian. Each tribe decides on and enforces its own membership rules. The National Indian Gaming Commission describes federal policy this way:

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Indian tribes have the authority to determine membership requirements. Many tribes have a blood quantum requirement (i.e., one-fourth) and may have additional requirements relating to residency, place of birth, or enrollment deadlines. The Federal Government generally requires a person to be a member of a federally recognized tribe to be eligible for federal benefits.²⁶

For example, leaders of the Snoqualmie Tribe, in a dispute over control of the tribe's anticipated casino profits, recently expelled 60 members because they "don't have the required one-eighth tribal blood to be members."²⁷ At the same meeting of designated "preferred voters," tribal leaders banished eight members, depriving them of all tribal benefits, including the right to be on tribal land and the right to claim Indian identity.²⁸

For purposes of the U.S. Census, the definition of who is an Indian is based on self-identification. In 2010, 2.78 million people identified themselves as American Indian or Alaska Native.²⁹ Only a small portion of people who self-identify, however, are registered members of a recognized Indian tribe.

Tribal Businesses' Tax Status

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.

Some tribal businesses make limited 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.

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 Occupation 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% on gross receipts from gambling. More than half of local jurisdictions that tax non-tribal card rooms impose a tax rate of around 10 or 11%.

Many tribes are moving beyond their traditional core business of operating casinos and game rooms and branching out into other industries. Already, more than 50 tribal gas stations are exempt from paying 75% of the state fuel tax (the tax is 37.5 cents per gallon), underselling non-tribal operators who cannot compete with tax-exempt prices. Proposals for future tribal businesses also include 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.

The Indian Gaming Regulatory Act

In 1988, Congress passed the Indian Gaming Regulatory Act prohibiting states from taxing tribal gaming revenues. However, tribes sometimes negotiate a voluntary profit-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.

In Washington, however, there is no profit-sharing agreement between the state and Indian tribes, as there is in most other states.

In 2005, the Washington State Gaming Commission reached a tentative agreement with the Spokane Tribe under which the tribe would pay a percentage of its gaming profits, based on a sliding scale, to the state general fund.³⁰

This agreement never took effect. On October 27, 2005, Governor Gregoire sent a letter to the Gaming Commission canceling the proposed agreement and instructing state negotiators to start over.³¹

In 2007, she signed a new agreement with financial terms far more generous to the Spokane Tribe.³² Under the new compact, the

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tribal members will retain between \$60 million and \$90 million over ten years, which, under the canceled agreement, would have been paid to the general fund and used to fund state programs.

The canceled 2005 Spokane Tribe agreement could have served as a model for agreements with the state's other casino-owning tribes. If the state had such profit-sharing agreements with these tribes, the state general fund in 2006 alone would have received between \$42 million and \$490 million, depending on the net profits of individual casinos.

The following table summarizes the legal and regulatory advantages of tribal-owned businesses.

Comparison of Washington State Regulations and Taxes that Apply to Tribal Businesses and Non-tribal Businesses		
	Tribal Businesses	Non-tribal Businesses
Must obey indoor smoking ban	No	Yes
Must obey 1964 Civil Rights Act	No	Yes
Must obey voter-approved initiatives	No	Yes
Pay gaming taxes	No	Yes
Pay Business & Occupation tax	No	Yes
Pay sales tax	No	Yes
Pay tobacco tax	No	Yes
Pay workers' compensation tax	No	Yes
Pay unemployment tax	No	Yes
Pay state gas tax	25%	100%
May offer slot machines	Yes	No
May offer Keno	Yes	No
May offer Craps	Yes	No
May offer Roulette	Yes	No
May offer Baccarat	Yes	Yes
Higher betting limit	Yes	No

Recommendations

- 1. State leaders should negotiate an agreement with tribal casino owners so that a portion of gambling profits are paid into the state general fund in lieu of taxes, as is common in most other states.**

By not following through with the model agreement negotiated with the Spokane Tribe in 2005, state leaders are depriving the state of important additional revenue that could supplement spending on essential public services, like public education and health care.

They are also missing an opportunity to serve the public interest, because there is no policy in place to redress some of the imbalance between the favorable tax treatment enjoyed by tribal businesses and the high-tax environment in which all other business owners must operate.

- 2. Policymakers should set up a review of the relationship between the state and tribal businesses, especially in new areas of commerce, like gas stations, in which tribes compete against non-Indian citizens.** Policymakers should request a study to measure the economic and competitive impact of tax-free tribal businesses on non-tribal businesses in areas of commerce other than gambling. An objective assessment is needed to determine whether the special tax and regulatory treatment granted to tribal businesses is exceeding its intended purpose.