

Tribal Gaming Revenue Sharing in California

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The Indian Gaming Regulatory Act (“IGRA”) requires Indian tribes to execute Tribal-State Gaming Compacts in order to conduct the full panoply of casino gaming, or “Class III” gaming, which includes slot machines and table games such as blackjack. Currently, 70 Indian tribes in California have executed these compacts.

In September of 1999, the California legislature ratified 61 compacts with Indian tribes, all based on a model compact negotiated by the State and tribes. The 1999 compacts ostensibly limited the number of devices to 2,000 per tribe and specified that non-gaming tribes, and tribes operating fewer than 350 gaming devices, receive \$1.1 million annually from a Revenue Sharing Trust Fund (“RSTF”) administered by the California Gambling Control Commission. The RSTF is funded by payments from tribes operating more than 350 machines (or the number of machines in operation on September 1, 1999, whichever is greater). The RSTF gained tribal and popular support in California for the legislation and constitutional amendment enabling Indian gaming in California because it allowed tribes located far from population centers to benefit from Indian gaming.

In addition to the RSTF, the 1999 compacts provide for reimbursement to the State for the costs of regulating Indian gaming by the California Gambling Control Commission and for payments to a Special Distribution Fund (“SDF”). The SDF funds are to be used for (a) programs designed to address gambling addiction, (b) payments to state and local government agencies impacted by tribal government gaming, (c) regulatory costs related to the compacts, (d) payment of shortfalls in the RSTF, and (e) “any other purposes specified by the Legislature.” The SDF has been consistently used to cover shortfalls in the RSTF. Most recently, just over half of the funds for the latest RSTF quarterly payment of \$275,000 per tribe were drawn from machine license fees, and the rest was drawn from the SDF to cover the shortfall.

Recently, the Rincon Band of Luiseno Indians became the first Indian tribe to enter a compact imposed by a federal court pursuant to IGRA. IGRA provides a regulatory scheme balancing the interests of states and Indian tribes and includes a mechanism ultimately requiring states to negotiate gaming compacts with Indian tribes in good faith. If states refuse, Indian tribes may sue states in federal court, and the court may impose mediation and force a compact.

Despite the Supreme Court’s ruling in *Seminole Tribe v. Florida*, California’s Proposition 5 ballot initiative to promote Indian gaming, promoted by the State and passed by the voters in 1998, waived the State’s sovereign immunity to any cause of action related to the State’s failure to negotiate

compacts. Similarly, the 1999 compacts, including Rincon Band's compact, contain a limited waiver of both tribal and state sovereign immunity. In 2000, the voters passed Proposition 1A to amend the California constitution to authorize the governor to negotiate compacts with tribes.

California's waiver allowed the Rincon Band of Luiseno Indians to sue the State for refusing to renegotiate a compact in good faith in 2004. The Band had executed a compact in 1999 but hoped to add 900 slot machines to its casino in the 2004 negotiations. Governor Schwarzenegger's administration demanded payments to the State's general fund, which was burdened with an enormous budget deficit, in exchange for the expansion. A federal district court found that the payments to the California general fund constituted an illegal tax on the Tribe, the Ninth Circuit agreed, and the U.S. Supreme Court refused the State's appeal. When the Tribe and State failed to reach agreement last year, both sides submitted their "last best offer" compact proposals to a court-appointed mediator. In June, the mediator selected the Rincon Band's version as the proposal that "best comports with IGRA" and the Secretary of the Interior approved the Band's proposed compact, after nine years of negotiations and litigation.

Under Governor Brown, California's attitude towards negotiating with Indian tribes has returned to a more cooperative spirit. It is clear from the Graton compact that Tribes are still willing to enter substantial revenue-sharing arrangements with the State after the Rincon decision and that the Secretary of the Interior will approve those arrangements. However, the Rincon decision will likely affect the renegotiation of the other compacts executed under Governor Schwarzenegger that provide for payments to the California general fund.

To read more about California's revenue sharing, you can read the full article in the latest edition of [Gaming Legal News](#).

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