

TRIBAL GAMING IN NORTH DAKOTA AND WISCONSIN

NORTH DAKOTA

In North Dakota five tribes have gaming compacts with the state. Pursuant to North Dakota Century Code Section 54-58-03, the Governor has authority to negotiate the terms of the compact without specific legislative approval. The compacts are for 10-year terms, and expiration dates vary from 2012 to 2013. Five-year extensions to the compacts occur automatically unless either the tribe or the state wishes to renegotiate the terms. The compacts provide that the tribes pay the actual cost of state regulation. The 2011-13 biennium appropriation for the Attorney General includes \$261,128 of revenue from the tribes to pay for the cost of state regulation of tribal gaming. North Dakota receives no other tribal gaming payments.

WISCONSIN

Section 14.035 of the Wisconsin Statutes authorizes the Governor, on behalf of the state, to enter Indian gaming compacts, and Chapter 569 ([Appendix A](#)) provides for the definition and distribution of Indian gaming receipts. Compacts require the tribes to submit annual independent financial audits of casino operations to the Department of Administration and to the Legislative Audit Bureau. The audits are confidential, and the revenue data for individual tribal operations may not be publicly disclosed.

Section 569.01(1m) of the Wisconsin Statutes defines Indian gaming receipts as money received by the state from:

- a. Indian tribes as reimbursement for state costs of regulation of Indian gaming under Indian gaming compacts, except money received as direct reimbursements to the Department of Justice.
- b. Indian gaming vendors and from persons proposing to be Indian gaming vendors as reimbursement for state costs of certification and background investigations under Section 569.04, except money received as direct reimbursements to the Department of Justice.
- c. Indian tribes as reimbursement for state costs of gaming services and assistance provided by the state that are requested by an Indian tribe.
- d. Indian tribes pursuant to an Indian gaming compact, except money received as direct reimbursements to the Department of Justice.

The first state-tribal gaming compacts, signed in 1991 and 1992, required tribes to jointly provide \$350,000 annually to the state as reimbursement for its costs of regulation of Class III gaming under the compacts. Each tribe's share of this amount is calculated annually, based on its relative share of the total amount wagered on tribal gaming statewide

during the previous fiscal year. These state payments are still in effect. Each tribe must also directly reimburse the Department of Administration and the Department of Justice for their actual and necessary costs of providing requested services and assistance.

In the 1998/1999 compact amendments, each tribe agreed to make additional annual payments to the state that had not been required under the original compacts, and each compact included a provision that relieved the tribe of its obligation to pay these additional amounts if the state permitted the operation of electronic games of chance or other Class III games by any person other than a federally recognized tribe or by the state lottery. Some compact amendments provided for negotiations to reduce the annual payments if agreements with another tribe or an expansion of the state lottery caused a substantial reduction of the tribe's Class III gaming revenues. These provisions reflect that the additional tribal payments are not a form of state tax payment or a payment made in lieu of state taxes. Rather, the payments were agreed to by the tribes in recognition of an exclusive right to operate Class III gaming without additional competition from other parties in the state.

The intended use of the additional state revenue under the 1998/1999 amendments was specified, with some variations, in most of the amended compact agreements. Nine agreements included ancillary memorandums of understanding relating to the intended use of the additional payments, but two agreements, including the Ho-Chunk tribal agreement amendment, did not include a memorandum of understanding and are silent on the matter of how the state utilizes the additional gaming revenue. To varying degrees, most of the memorandums of understanding list economic development initiatives to benefit the tribes, economic development initiatives in regions around casinos, promotion of tourism within the state, and support of programs and services of the county in which the tribe is located as intended uses of the additional payments.

The 2003 amendments to the tribal gaming compacts significantly increased tribal payments for those tribes with larger casino operations. These increased payments were associated with 2003 amendment provisions that established compacts with unlimited duration and expanded the types of authorized games played at the tribal casinos. Legal challenges to the unlimited duration and the expanded scope of games provisions resulted in uncertainty regarding the legal status of the state payment provisions in the 2003 amendments. However, tribal payments have generally continued to be made to Wisconsin in conformity with the 2003 amendments, with the exception of the Ho-Chunk Nation. The dispute with the Ho-Chunk

Nation resulted in litigation and additional compact amendments in 2008.

The 2008 amendments to the Ho-Chunk Nation compact required that on May 1, 2009, and each May 1 thereafter that the compact is in effect, the tribe is required to pay to the state an annual payment of 5 percent of the net win from the tribe's Class III gaming facilities (casinos). If the net win at the Ho-Chunk Nation's Class III gaming facilities for any July 1 through June 30 period is greater than \$350 million, the tribe is required to pay to the state an amount equal to 5.5 percent of the net win for that period. In addition, the tribe is authorized to offset a portion of the payments to the state in several ways, including:

- Payments to the counties of \$1,000 per acre of land owned by the United States government in trust for the tribe located within each county's jurisdiction in July 2003. These county payments may be expended by each county for any purpose, except that the county cannot use the funds in a manner that would diminish the tribe's governmental jurisdiction or have an adverse financial impact on the tribe. In July 2003 the Ho-Chunk Nation had approximately 2,300 acres of trust land, which resulted in a reduction to the annual state payment of \$2.3 million for payments made to the counties.
- Amounts paid by the tribe for public works projects that benefit both the tribe and the state, including its political subdivisions up to \$1 million in any one year and not to exceed \$5 million for the 10-year period ending May 2019. The tribe is required to consult with, but does not need the prior consent of, the state regarding which public works projects qualify for the deduction.
- Any additional amounts paid by the tribe for projects that the state and the tribe agree provide a substantial public benefit in the areas

of economic development; infrastructure improvement; or public health, welfare, or safety. These deductions may not exceed \$4 million in total and may not be greater than \$1 million from any annual payment unless a greater amount is agreed to by the state.

In Wisconsin all tribes pay a percentage of net win on all games, but the percentages vary by tribe. Smaller tribes pay as little as 1.75 percent of net win in excess of \$5 million, while other tribes pay 3 percent or 4.5 percent of net win. The largest tribes pay between 5 percent and 8 percent of net win. In some cases, the percentage may vary from year to year for a particular tribe.

Section 569.06 of the Wisconsin Statutes provides that Indian gaming receipts are appropriated to the Department of Justice for gaming law enforcement and to the Department of Administration for general program operations relating to Indian gaming regulation under the compacts and for transfers to other state programs. Indian gaming receipts remaining after these allocations are deposited in the state's general fund.

An analysis of the 2011-13 biennial budget of the Department of Administration, Division of Gaming, by the Wisconsin Legislative Fiscal Bureau ([Appendix B](#)) estimates tribal payments will total approximately \$108.4 million during the 2011-13 biennium. After reducing the tribal payments for statutory distributions totaling approximately \$27 million each year and other adjustments, the Fiscal Bureau estimates Indian gaming receipts deposited in the state's general fund will total \$52.6 million during the 2011-13 biennium. In addition, the Fiscal Bureau's analysis provides a schedule of the 2011-13 tribal gaming revenue appropriations totaling \$27 million annually, including funding for gaming law enforcement, general program operations, and transfers to other state programs.

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