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**P.O. Box 355**  
Penryn, CA 95663

**Gas and Gamble**

**California Tribal Gas Station/Convenience Store Operations**

**2010**

**By Cheryl Schmit, Director**

Tribal governments in California are aspiring to expand tribal land bases, increase and assert tribal authority and jurisdiction. Tribes continue to achieve this goal through the acquisition of new land taken into federal trust for the benefit of a tribe. Often the land is used for business developments that are free from local and state taxation and environmental and regulatory oversight. Tribal gaming has been the economic engine along with the federal fee to trust process<sup>1</sup> that has promoted this jurisdictional and economic growth of tribal governments across California. Many tribal casinos now provide amenities such as hotels, spas, golf courses, gas stations, cigarette shops, retail outlet centers and restaurants. Tribal governments are in direct competition with local governments and states for taxable revenues.

Taxes on gasoline and cigarettes are significant revenue sources for the State of California.<sup>2 3</sup> Taxes from these items also provide beneficial public services, such as road development, expansion and maintenance and public health services to our States 37.2 million citizens. Regulations imposed on non-tribal independent gas station owners by County *Weights and Measures* insure that consumers are receiving a gallon of gas for the stated price per gallon from the pumps. Non-Indian stations must comply with County and State regulatory oversight requiring the sale of certified gas which insures clean air standards and reduced greenhouse gas emissions benefiting public health.

Tribes are dependent on the State’s transportation systems in their quest for economic self-sufficiency. State roadways provide access to rural reservations transporting patrons and employees to tribal casino/destination resorts. Sharing in the development and maintenance of our states infrastructure is mutually beneficial to tribes and all residents of the state. The development of local mitigation agreements or consideration of a state tribal cooperative agreement addressing in-lieu of taxes on tribal gasoline stations/convenience stores is worthy of state and tribal government consideration.

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<sup>1</sup> Indian Reorganization Act (Wheeler-Howard Act) June 18, 1934) An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

<sup>2</sup> Tax Foundation [www.taxfoundation.org](http://www.taxfoundation.org) As of Feb. 1, 2010 California Sales Tax rate is 8.25% which includes a statewide “local” sales tax rate that localities cannot amend. Gas Tax per Gallon is \$.46.6 and Cigarette Tax is \$.87. Gas rates include excise taxes, environmental fees, storage tank fees, and other fees and taxes, general sales tax and local taxes.

<sup>3</sup> Nov. 2010 a station owner reports: The gasoline excise tax is .353 cent per gallon, the sales tax on gasoline (state wide) is 2.25%. Our sales tax in Porterville is 3.25%. We have a County 1/2 percent and a City 1/2 percent extra.

In 2004, *Indian Gaming Magazine* cited 12 gas station/convenience store operations<sup>4</sup> in California. A few of these operations are currently re-modeling and expanding the original facility to include, gaming device arcades<sup>5</sup>, RV parks and Truck Stops. The list of tribal stations that follows demonstrates that number has grown in the last 6 years. A new trend of the tribally owned stations is to offer slot arcades which expand the scope of gaming in California and a drift towards “convenience gambling”<sup>6</sup>. “Gas and gamble” locations began to appear in 2004. These locations are now taking hold on a statewide and national level. This growth signals the need for review of tribal state compact language and regulatory oversight policies in order to avoid future unintended consequences. Such a review will ensure fair competition to non-tribal small business owners, consumer protections and continued revenue to local governments and the State.

Some tribes purchase gas from distributors in state. Sales of motor vehicle fuel and diesel fuel to Native American Indian retailers on an Indian reservation are subject to the imposition of the state excise tax (motor vehicle fuel tax and diesel fuels tax) and the requirement to collect prepaid sales tax. Current law does not provide an exemption for collecting prepaid sales tax on sales of fuel to an Indian retailer on an Indian reservation. Although sales tax may not apply to retail sales of fuel by Indian retailers, the Indian retailer is generally required to collect use tax on sales of fuel to non-Indians and Indians not residing on a reservation.<sup>7</sup>

Distributors, such as Tesoro collect the tax at the “rack” whether they sell to tribal or non-tribal retailers. The “rack” is the location at which the product breaks bulk and the tanker trucks are filled with fuel. The tax is listed as a line item on the invoice.<sup>8</sup> This is done for both the branded and non-branded fuels. This tax is passed on to the consumer at the point-of-purchase. However, there are some exceptions, such as red-dyed diesel or off road fuel does not incur a road tax. Sales to certain government agencies may or may not have to pay all the taxes, based on current state laws.

On July 1, 2010 California changed the sales tax rate used in calculating the sale of gasoline from 8.25% (plus applicable district taxes) to 2.25% (plus applicable district taxes) while diesel fuel remained unchanged at 8.25% (plus applicable district taxes) but is scheduled to increase on July 1, 2011 to 9% (plus applicable district taxes). The State has put together a website addressing the sales tax rate change which can be found at:

<http://www.boe.ca.gov/sutax/gasswapfaq.htm#2>

District taxes refer to local levied taxes such as county, city, transit authorities, and special districts. For example Wilmington, California has two district taxes, Los Angeles County at 1%

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<sup>4</sup> "[Gas Station/Convenience Stores in Indian Country](http://www.klasrobinsonqed.com/articles/IGM_200408.pdf)" *Indian Gaming Magazine* - August 2004; Authored by Matthew Robinson [http://www.klasrobinsonqed.com/articles/IGM\\_200408.pdf](http://www.klasrobinsonqed.com/articles/IGM_200408.pdf)

<sup>5</sup> Slot Machines, or class II gaming devices

<sup>6</sup> Convenience gambling is controversial because of its location. Patrons regularly encounter slot arcades in the course of their day to day activities, i.e. gas stations, bowling allies, mini marts. Moreover this form of gaming can be purchased and installed quickly at existing sites with relatively small capital investments. The National Gambling Impact Study Commission in 1999 strongly recommended that this form of gaming be significantly limited.

<sup>7</sup> State Board of Equalization, Special Notice, may 2010, New Tax Rates for Motor Vehicles Fuel

<sup>8</sup> See attached invoice

and Los Angeles County Transit 1.5% for a total of 2.5%. The 2.5% district taxes + the 2.25% state taxes combine for a total sales tax rate 4.75%. To determine the specific district taxes that apply to specific locations, it is advisable to check with the California Board of Equalization. Below is how to calculate sales tax on a gallon of gas.<sup>9</sup>

Gasoline	
Sales price per gallon of gasoline net of taxes:	\$ 3.00
Federal Excise Tax	\$ 0.184
State Excise Tax	<u>\$ 0.353</u>
Sub-Total	\$ 3.54
Wilmington, CA	
Sales Tax calculated at \$3.00 (per gallon of gas) *	
Wilmington, CA sales tax rate 4.75%	<u>\$ 0.168</u>
Total	\$ 3.71

Nevertheless there appears to be some gray areas when tribes purchase gas from “out-of-state” distributors. This evolving gray area potentially presents future unintended consequences to the non-tribal independent gas station and convenience store owners as well as revenues to local districts and the State. Some independent retailers have already begun to find themselves in direct competition with tribal governments that are avoiding state tax obligation or requirements to adhere to stringent state regulatory standards for the purchase and sale of “certified gasoline”. As of this writing, two tribal stations have been verified as purchasing non-certified gas from a distributor outside of California. In these instances there is an estimated annual loss of 2 to 3 million dollars per tribe in taxable annual revenue to the State of California. For example:

The Tule River Indian Tribe and the Torres Martinez Band of Mission Indians fuel comes from an Indian-run company<sup>10</sup> chartered under the bylaws of the Yakama Tribe in Washington State, which claims a special trade status under a treaty with the federal government.<sup>11</sup> The Yakama Tribe’s 1855 Treaty secures to “tribal members” the right to travel upon the public highways.

<sup>9</sup> This information was supplied by, Tesoro Companies, Inc., 19100 Ridgewood Parkway, San Antonio, TX 78259, Jeff Landel, Government Affairs

<sup>10</sup> Sierra Tobacco Distributors, has a wholesale license with Nevada, delivery may only be accepted at the Washington state address in Yakama. #156

<sup>11</sup> Article III of the Treaty provides in relevant part: And provided, That, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways. Treaty with the Yakamas, Art. III, 12 Stat. 951, 952-53 (1855) (second emphasis added) UNITED STATES v. SMISKIN Nos. 05-30590, 05-30591. **Argued and Submitted Oct. 17, 2006. -- May 18, 2007**

The Nevada Distributor selling gas to these tribes is a member of the Yakama Tribe of Washington State. The State of Nevada unlike California does not require the collection of excise and state tax at the rack. Nor does Nevada fuel meet the California Air Resources Board (CARB) specifications for automobiles and thus does not have a valid certification stamp.

The current policy of the CARB allows for the shipment of non-certified gas across state lines. This allows for the delivery of gas for sale at boating marinas or transportation of gas by haulers merely passing through California on route to Oregon or Washington State. (California Code Title 13, Section 2261) Nevertheless, this raises state and federal regulatory questions and health and safety concerns about the transportation of non-certified gas across state lines for retail sale on Indian lands for use in automobiles.

Yakama Tribal claims of a special trade status raise significant questions. Does a Treaty right for “individual members” extend to “non-tribal members” transporting fuel in non-tribally owned transports intra or inter-state? Does this special treaty right to travel on public highways for tribal members expand to a special trade status for all commerce by the Tribe carried out by non-tribal members on public highways? Moreover, the Treaty language seems to be specific to the State of Washington, to fishing, erecting temporary buildings for curing fish, hunting and gathering and the pasturing of horses and cattle. The 1855 Treaty Article 3, language states:

**And provided that, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways.** The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them: together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

The language of the Yakama Tribe’s 1855 Treaty does not appear to grant the right to the tribe for sale and transportation of non-certified untaxed gas in transports not owned or operated by tribal members.

Below is a brief list of tribal gas stations/convenience stores by county currently operating or proposed for construction. Recent changes to the transportation tax laws<sup>12</sup> have further created an unknown estimated economic impact to County governments. Further unknown is the statewide economic impact or loss of state transportation taxes incurred due to the expansion of tribally owned and operated gas stations that may not forward state sales tax on gas. Or, that an environment of unfair competition will reduce gas sales tax to the State. Also unknown is the

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<sup>12</sup> It is currently unclear what impact the passage of Proposition 26 on prior Propositions 42 will have on transportation taxes affecting California Counties.

potential loss of state taxes on tobacco products at tribally owned convenience stores or smoke shops.

As the California Legislature examines the State Budget deficit, transportation, tobacco and state sales taxation issues, as well as the expanded scope of slot arcades at tribally owned gas stations and convenience stores is worthy of lawmakers consideration.

#### Amador County

**Jackson Rancheria:** The two-acre site includes a general store, 12 state-of-the-art fuel dispensers (regular, mid-grade, premium, and diesel), touchless car wash, and touchless RV wash. <http://www.jacksoncasino.com/shopping/index.aspx>

#### Butte County

**Mooretown Rancheria:** 6 pumps and mini mart - a Shell Station  
<http://www.newsreview.com/sacramento/content?oid=27583>

#### Del Norte County

**Smith River Rancheria:** The Lucky 7 Casino started out in a doublewide module trailer in 1996 with approximately 60 machines. In 2001 we opened a new facility, which now offers 270 slot machines, Blackjack, Bingo, the House of Howonquet restaurant, a 6 pump Fuel Mart/Convenience store. The Lucky 7 is the Tribes *second* gaming facility.  
[http://www.lucky7casino.com/index.php?option=com\\_content&view=category&layout=blog&id=9&Itemid=](http://www.lucky7casino.com/index.php?option=com_content&view=category&layout=blog&id=9&Itemid=)

#### Humboldt County

**Blue Lake:** The Play Station 777” OPEN 24/7 consistently, the lowest gas prices in the region. 6 regular pumps and 3 diesel pump, this is a gas and gamble location.  
<http://www.bluelakerancheriansn.gov/boPlayStation.html>

**Rohnerville Bear Band:** This gas station/mini mart is also the Tribes second gaming facility. The casino has six pumps with four nozzles on each pump and a total of 6 diesel nozzles. <http://www.allindiancasinos.com/indian-tribes/california/41/bear-river-band-rohnerville-rancheria.html>

#### Imperial County

**Torres Martinez:** the travel center features a full line of high-quality fuels, including diesel and racing fuel, a large convenience store, RV dump, 18-wheeler parking, and a TV lounge and shower for truckers. <http://www.superpages.com/bp/Salton-City-CA/Torres-Martinez-Travel-Center-L2091814622.htm> 12 regular pumps and 4 diesels, opened as a 76 Union Franchise but lost the franchise when 76 Union discovered the tribe was selling unbranded gas. **Estimated sales are 500,000 gallons a month, the estimated loss to the State of California is \$3.5 million annually.**

#### Lake County

**Robinson Rancheria (Under construction)** August 2010, Robinson Rancheria Citizens Business Council in conjunction with the Robinson Rancheria Economic Development Corporation has approved to build a tribally owned and operated gas station located across from Robinson Rancheria Resort & Casino.

#### Madera County

**Chukchansi Rancheria: (Under Construction)** August 2010 The Chukchansi Indians plan to open a commercial complex at the entrance to the tribe's casino next summer that

will include a gas station offering steeply discounted gas -- the first such operation in the Valley. The \$5 million development also will include a smoke shop and other stores and restaurants. Construction is to begin on the 25,000-square-foot Chukchansi Crossing project next month on reservation land at the corner of Highway 41 and Lucky Lane, the road leading to the Chukchansi Gold Resort-Casino in Coarsegold. (15 pump station)  
<http://topics.npr.org/article/0buGgryaye7aD>

### Riverside County

**Pechanga:** The Pechanga Gas Station, situated just up the street from the RV Resort, is big-rig accessible, offers all grades of fuel including diesel as well as propane, and features a car wash. The adjoining Mini-Mart stocks a selection of wine, beer, soft drinks, tobacco products, snacks, fresh food, Baja Express Restaurant (featuring a Mexican and American menu serving breakfast, lunch and dinner), necessities and sundry items. The Mini-Mart also has an ATM and camping supplies. <http://www.pechanga-nsn.gov/page?pageId=77>

**Morongo:** Morongo Casino Resort & Spa also reinforces the tribe's history of diversified operations, which include the nation's largest Shell gas station, independently owned, **wholesaler is Tesoro Corporation.** This is the Tribes second gaming facility. [http://www.riversidegasprices.com/Morongo\\_Travel\\_Center\\_Gas\\_Stations/Cabazon/79578/index.aspx](http://www.riversidegasprices.com/Morongo_Travel_Center_Gas_Stations/Cabazon/79578/index.aspx)

### San Diego County

**Barona:** "The Barona Station," a \$600,000 gas station that created 18 new jobs. <http://www.barona-nsn.gov/index.php?q=node/8>

**Pala:** Gas Station and mini-mart  
[http://www.sandiegogasprices.com/Pala\\_Casino\\_Gas\\_Stations/Pala/121229/index.aspx](http://www.sandiegogasprices.com/Pala_Casino_Gas_Stations/Pala/121229/index.aspx)

**Campo:** Truck Stop Casino is **open 24/7, fuel, food, and casino fun.** Clean restrooms, hot showers, plenty of truck parking, laundry facilities, TV lounge, DAT load board, fast internet via WiFi and internet kiosk, UPS and FedEx drop boxes. Part of the Casino building. <http://www.goldenacorncasino.com/travel-center>

### Santa Barbara

**Chumash:** The Santa Ynez Band of Chumash Indians plans to demolish its gas station at 3545 E. Highway 246 and build a new, five-pump station at a nearby location. Those plans also would include building a 2,500-square-foot convenience store and a 641-square-foot car wash that uses recycled water. "This is going to be state of the art," said David Swenk of Urban Planning Concepts, agent for the tribe. "It's going to have a canopy, and the convenience store will be larger. "The new service station would be located on 1.14 vacant acres at the southeast corner on the Highway 246 and Edison Street intersection. The tribe also owns a gas station at 3101 E. Highway 246 near Solvang. "The structure at 3545 is old and the space is smaller," Swenk told the Journal.

“(The tribe) wanted something better, and refurbishing it at the location wouldn’t accomplish that goal.” <http://www.syvjournal.com/archive/7/43/5321/>

### Tulare County

**Tule River Indian Tribe:** Eagle Feather Trading Post is one of the largest convenience stores in Tulare County, located on Hwy 190 just above Lake Success.<sup>13</sup> The store has a full line of groceries; cold beer, wine, fishing and bait supplies. We carry National and Native brands of cigarettes and tobacco products. Our gas, diesel, and propane are the cheapest price around. Subway sandwich shop is located within the store offering great food at a great price. For the RVers we also have a free dump station and a pet run. Plenty of parking is available for our customers, with security on site 24 hours a day. Our friendly staff is always ready to be of service. Stop by and see our super clean store and restrooms! 12 pumps include regular and diesel fuel. <http://www.tulerivertribe-nsn.gov/enterprises> **Estimated tax loss to the State is \$2.5 to \$3 million annually.**

### Yolo

**Rumsey Rancheria:** The economic and social benefits of Indian gaming on Indian and non-Indian communities are The Rumsey Band has used gaming revenues to diversify its economy beyond gaming. Today, the nation also runs the Brooks Mountain View Mini Mart, and a service station. <http://www.indiangaming.org/library/articles/rumsey-band.shtml>

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<sup>13</sup> Gas stations: latest fight of tribes against the locals? By Malcolm Maclachlan | 07/29/10 12:00 AM PST Capitol Weekly [http://www.standupca.org/news/gas-stations-latest-fight-of-tribes-against-the-locals/?searchterm=gas station](http://www.standupca.org/news/gas-stations-latest-fight-of-tribes-against-the-locals/?searchterm=gas+station) “**Blaylock confirmed that his station avoids about 44 cents a gallon in state and local taxes.** But they’re also under constraints about how they can buy the gas, which ends up eating up much of the difference. The actual price difference between his station and others in the area is about nine cents a gallon, Blaylock said - the equivalent of not having to pay sales tax. He said the Eagle Feather station is probably the third-biggest in the San Joaquin Valley, after a pair of mega-sized truck stops on rural Interstate 5.”