

March 24, 2003



Hon. James L. Brulte
Senate Republican Leader
Room 305, State Capitol
Sacramento, California 95814

Dear Senator Brulte:

This letter is in response to your request regarding the Indian Gaming Revenue Sharing Trust Fund. Specifically, you asked us to conduct an audit of this fund. In discussions with your staff, we indicated that our office does not typically conduct "audits." In this case, we were able to compile the answers to your questions without conducting a formal audit of the fund. In preparing our response, we have relied largely on publicly available information from the state-tribal compacts, minutes from the California Gambling Control Commission meetings, and commission reports. The commission provided us additional information to complete our answers.

Background. The Revenue Sharing Trust Fund receives its revenues from payments made by compact tribes. Payments to the fund are based on a tribe's number of licensed machines. The compacts state that a tribe may acquire and maintain a license to operate a gaming machine by paying into the fund as shown in Figure 1. In addition, in order to obtain a license for the machine, a tribe must pay a one-time nonrefundable fee of \$1,250 per machine. These one-time fees also are deposited into the fund. The commission is the trustee of the fund and is responsible for the collection, deposit, and distribution of revenues.

Number of Licensed Gaming Machines	Fee Per Machine Per Year^a
1 to 350	—
351 to 750	\$900
751 to 1,250	1,950
1,251 to 2,000	4,350

^a Fee is paid on the number of machines in each increment. For example, a tribe with 800 machines pays no fee on the first 350, then \$900 per machine on the next 400, and \$1,950 per machine on the last 50 machines.

Legislative Analyst's Office
California Legislature
Elizabeth G. Hill • Legislative Analyst

Which Tribes Are Eligible to Receive Payments From the Fund? Revenues from the fund are to be distributed annually to noncompact tribes. A noncompact tribe is defined by the compacts as a federally recognized tribe that either does not operate machines or is operating fewer than 350 machines.

To determine which tribes are operating fewer than 350 gaming devices, the commission requires all tribes that have a signed compact but operated less than 350 gaming devices during the previous quarter to submit forms recertifying the number of gaming machines in operation.

A tribe loses eligibility to receive payments from the fund when it (1) operates more than 350 gaming devices on any given day during a quarter or (2) is no longer federally recognized.

What Formula Is Used to Determine the Amount of the Disbursements? The quarterly distribution made to each eligible tribe is the total cash receipts of the fund in the quarter divided by the number of eligible noncompact tribes in that given quarter. Based on this formula, all eligible tribes are provided an equal share of the quarterly disbursement.

The compacts specify that distributions shall not exceed \$1.1 million per year per tribe. During any fiscal year, if a distribution to a tribe would make the total distribution to the tribe for the year exceed the \$1.1 million limitation, only the portion within the cap would be distributed. So far, no distributions to any recipient tribe have approached this annual limitation. Based on the distribution amount for the first two quarters this fiscal year, we project that a tribe qualifying for all four quarters would receive about \$500,000.

How Much Has Been Distributed to Eligible Tribes? Based on the commission's quarterly reports for the fund, a total of \$77.8 million has been deposited into the fund since its creation in August 2000. As displayed in Figure 2, all of these funds have been distributed to eligible tribes through five payments. This amount includes about \$900,000 which is approved for distribution but is being held on behalf of two tribes—pending resolution of tribal leadership issues.

Have the Required Payments Been Made to the Fund? The compact does not specify a due date for required payments to the fund. Section 4.3.2.3 of the compacts, however, does specify that a tribe may not conduct any gaming activity authorized by the compacts if the tribe is more than two quarterly contributions in arrears in its license fee payment to the fund. According to information provided by the commission, for the quarter ending December 31, 2002, two tribes were in arrears by one quarter for a total of \$1.1 million, and one tribe was in arrears by over two quarters for \$519,000.

Figure 2 Time Frames of Fund Distributions		
Date of Distribution	For Quarters Ending	Amount Distributed
8/28/2001	September 2000 December 2000 March 2001	\$24,800,000
3/15/2002	June 2001 September 2001	15,300,000
10/21/2002	December 2001 March 2002 June 2002	17,611,558
12/3/2002	September 2002	11,690,323
2/19/2003	December 2002	8,343,641
Total		\$77,745,522^a
^a Includes \$897,236 in approved distributions, which is being held on behalf of two tribes pending resolution of tribal leadership issues.		

What Is the Fiscal Impact of the Commission's Interpretation of Compact Section 4.3.2.2 (e)? This section of the compact requires that the license for any gaming device shall be cancelled if the device is not in commercial operation within 12 months of issuance of the license. In addition, the language specifies that the one-time \$1,250 license prepayment fee be nonrefundable.

Prior to the creation of the commission, gaming licenses were issued by Sides Accountancy Corporation. The Attorney General determined in 2001 that only the commission is authorized to issue gaming licenses. In June 2002, therefore, the commission replaced Sides-issued gaming licenses with official gaming licenses. As part of this process, the commission allowed tribes to surrender unused Sides-issued licenses and receive either a credit or refund for their one-time license fees. As a result, a total of \$2.6 million in fees was returned to five tribes for licenses that were surrendered upon the official issuance of the licenses by the commission. Of the total amount returned, \$1.7 million was refunded and \$900,000 was credited against future obligations.

The commission authorized official licenses for all tribes in June 2002. As a result, the 12 month time limitation to put the licenses in commercial use has not yet ended. The commission reports that all of the required one-time license fees have been paid.

Hon. James L. Brulte

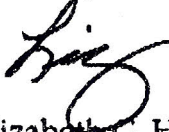
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Any licenses that are not put into operation within 12 months of issuance will be cancelled and available for reissuance. Consistent with the compacts, the one-time fees would not be refunded.

If you have any questions or would like to discuss the issue further, please do not hesitate to contact Lisa Mangat at 319-8341 or Michael Cohen at 319-8310.

Sincerely,



Elizabeth G. Hill
Legislative Analyst