



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

DEC 7 2000

Honorable Hilda Smoke
Honorable Alma Ransom
Honorable Paul Thompson
Honorable Richard Terrance
Honorable John Bigtree, Jr.
Honorable Harry Benedict
Chiefs, St. Regis Mohawk Tribe
Route 37, Box 8A
Hogansburg, New York 13655

Dear Chiefs:

We have completed our review of the Amendment to the Tribal-State Compact (Compact Amendment) between the St. Regis Mohawk Tribe (Tribe) and the State of New York, submitted by letter dated October 18, 2000, from Patrick L. Kehoe, Senior Assistant Counsel, Office of the Governor, and Dexter W. Lehtinen, Counsel for the Tribe. The October 18, 2000 letter states that the proposed Amendment was executed on October 13, 2000. We found no evidence regarding the execution date in the documentation submitted to our office. For the following reasons, the Compact Amendment is hereby disapproved.

In our letter of July 26, 2000, disapproving an earlier proposed amendment to the Compact, we indicated that Section XXIX(B)(3) of the proposed amendment to the Compact which specifically provided that the conduct of any lottery game by the New York State Lottery shall not affect contributions to the State by the Tribe for EGD authorization, was unacceptable because any event that eliminates or reduces the exclusivity enjoyed by the Tribe must trigger the elimination of, or a reduction in, the Tribe's payment obligation. We pointed, by way of example, that if the State Lottery is authorized to operate a version of electronic keno that is similar to the Tribe's electronic keno game played through its EGDs, payments to the State under the proposed amendment to the Compact, would not decrease, or be diminished.

The new proposed Amendment to the Compact still contains Section XXIX(B)(3), and, thus, our concern with this provision has not been addressed. In your letter of October 18, 2000, you indicate that you have addressed our concern by eliminating the electronic keno game from this Amendment entirely. In our view, the problem does not lie with the grant of exclusive rights to the Tribe for electronic keno, but with

the failure of the proposed Amendment to relieve the Tribe of its obligation to make revenue-sharing payments if the State lottery is authorized to operate a similar game. We have the same concern if the State Lottery is authorized to operate a version of electronic pull-tabs that is similar to the Tribe's electronic pull-tabs played through its EGDs.

Finally, the recommendation in our July 26, 2000, letter, that the Amendment adopt the definition of "net revenues" contained in 25 U.S.C. § 2703(9) of the Indian Gaming Regulatory Act (IGRA) was not addressed. The proposed Amendment adopts a definition of the term that is inconsistent with the IGRA definition but quite similar to the definition of "gross gaming revenue (win)" adopted by the American Institute of Certified Public Accountants (AICPA) in its Audit and Accounting Guide, "Audits of Casinos." That definition of gross gaming revenue is, "[t]he net win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses." The statement in your October 18, 2000 letter that "there is no way the State could make money from the machines when the Tribe is not" is not accurate. The State's costs and expenses associated with revenue-sharing are inconsequential. The Tribe's costs and expenses are large, and no evidence has been presented that the Tribe currently has a positive net revenue as defined in IGRA.

We regret that our decision could not be more favorable at this time.

Sincerely,

/s/ Kevin Gover

Assistant Secretary - Indian Affairs

Similar Letter Sent to: Honorable George E. Pataki
Governor
State of New York
Albany, New York 12224

cc: BIA Eastern Region
National Indian Gaming Commission - Attn: Bill Grant