

Tribal State Gaming Compacts



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Indian Gaming Regulatory Act (IGRA)



Congress enacted IGRA “to provide a statutory basis for the operation of gaming by Indian tribes as a means of ***promoting tribal economic development, self-sufficiency, and strong tribal governments...***” (IGRA § 2702)(emphasis added).

Compact Review



- The Secretary may only disapprove a proposed Compact if:
 - It violates IGRA,
 - It violates any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands,
 - It violates the trust obligation of the United States to Indians.
25 U.S.C. § 2710 (d)(8)(B).

Recent Issues of Note



- States have offered expanded table games in an effort to meet the Department's requirement that States provide a valuable concession to the Tribe in exchange for an increase in revenue sharing.
- Avoid including terms in a compact that limit the provisions of a land claim settlement act.
- Length of term for revenue sharing and the life of the compact do not always run concurrently.
- Tort Claims
- Sports Betting

Compact Basic Requirements



Is the Compact signed by appropriate Tribal Official?

Does Tribal Resolution authorize signature to the Compact?

Is the Compact properly signed by Governor/representative?

Is there evidence that the Governor/representative is authorized to sign the Compact?

Within the Tribe's constitution is there a quorum requirement and has it been met?

If the Compact authorizes the sale/service of alcohol, does the Tribe have an approved liquor ordinance?

Does the Compact authorize sports betting?

Is the Compact site specific and if so does the Tribe have documentation that the land is Indian Land?

Is the Amendment a simple extension of the term of the compact?

Specifically Allowed in Compact



- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

25 U.S.C. § 2710(d)(3)(C)

Specifically Allowed in Compact



- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are directly related to the operation of gaming activities.

25 U.S.C. § 2710(d)(3)(C)

The Good



- Low or no revenue sharing
- Compacts in Perpetuity
- Maximize Tribal Sovereignty
- Minimize State Intrusion
- Waiver of State Sovereign Immunity
- Tribal Exclusivity in State Constitution
- Multiple Locations for Gaming
- Compact Remains in Effect During Dispute Resolution Process.

Disapproved



- Hunting and Fishing Rights
- Settlement of Land Claims
- Settlement of Water Rights
- Class II gaming
- Reverter Clause
- Taxation of the Tribe:
 - requiring Tribe to pay revenue sharing even if exclusivity is lost
 - requiring Tribe to pay state before compact can be executed
- Issues unrelated to gaming
- Free Play
- Compacts that infringe on other tribes' rights
- Illusory Exclusivity

Undesirable Provisions



- Exorbitant Revenue sharing
- Limited or illusionary exclusivity
- Take it or leave it Compacts
- Revenue Sharing Versus Tax Rates
- Tribe as Primary Beneficiary
- Mitigation Payments-disguised tax
- Tribes as Businesses not Governments
- Non-Indian Gaming over Indian gaming
- Smoking Cessation and Regulation
- Side agreements
- Limits on number and locations of casinos
- Process for handling Customer Complaints

Compact, Amendment or Extension



- 45 Day review period begins when the original and all required documents are received at OIG. 25 C.F.R 293.11.
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- An Amendment is subject to the same review process as an original compact
- A simple extension of the compact term is not subject to review and approval but requires 1 original executed by tribe and state, tribal resolution and Governor's Certification. 25 C.F.R 293.5

Regulatory Secretarial Procedures



- 25 C.F.R Part 291
 - If IGRA Remedy is unavailable
 - Tribe must file suit and have case dismissed by State asserting 11th Amendment immunity
 - 5th Cir. Held DOI lacked authority to issue procedures
- 2014: Pueblo of Pojoaque: filed suit, case dismissed, submitted request for procedures.
- 2014 DOI began work on Procedures
- New Mexico sued DOI.
- Court issued injunction prohibiting DOI from working on Pojoaque procedures.
- DOJ Appealed to 10th Cir. Court of Appeals.
- April 2017 10th Circuit affirmed –DOI Lacked Authority