

INDIAN GAMING AND BEYOND: TRIBAL ECONOMIC DEVELOPMENT AND DIVERSIFICATION

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The timing of the South Dakota Law Review symposium on Economic Development in Indian Country coincides with the 20th anniversary of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. §§ 2701-2721, the federal law that established the legal and regulatory framework for tribal government gaming.

*When Congress enacted IGRA, it codified tribes' sovereign rights to conduct gaming on Indian lands, a right that the United States Supreme Court recognized in *California v. Cabazon Band of Mission Indians*.¹ One of IGRA's key policy goals was the promotion of tribal economic development. Twenty years later, Indian gaming has made significant headway toward achieving this goal. Tribal gaming is a \$26.5 billion industry that has generated hundreds of thousands of jobs and has leveraged an unprecedented diversification of reservation economies across the United States. Tribal gaming's economic impacts are about more than just quantifiable dollars or jobs—they are transformative. In this article, the authors—economist Alan Meister, law professor Kathryn Rand, and political scientist Steven Light—demonstrate how the legal, political, and regulatory underpinnings of Indian gaming created the foundation for its phenomenal economic success, and provide a detailed account of tribal gaming's economic impacts on and off reservations. The authors also explore the economic future of Indian gaming.*

I. INTRODUCTION

Economic development in Indian Country, the topic of this symposium issue, is nearly synonymous with tribal gaming. No other modern industry has had such a substantial economic impact on tribal economies, and no other tribal

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1. 480 U.S. 202 (1987).

industry has made such significant contributions outside of tribal economies.

Just two decades ago, as Congress deliberated over the bill that would become the Indian Gaming Regulatory Act of 1988 (IGRA),² Indian gaming consisted of a few tribes' high-stakes bingo halls and card rooms in a handful of states. Today tribal gaming is one of the fastest growing segments of legalized gambling in the United States, fed by the robust demand for casino gaming. In 1988, Indian gaming in a few bingo halls earned about \$121 million; in calendar year 2007, revenues from 425 gaming facilities operated by 230 tribes in 28 states topped \$26.5 billion.³

How did Indian gaming become a multi-billion-dollar industry? What are its economic and fiscal impacts, both on and off the reservation? And what does the future hold for Indian gaming and tribal economic development? We take up each of these questions in turn.

II. A BRIEF HISTORY OF INDIAN GAMING

A. CALIFORNIA V. CABAZON BAND OF MISSION INDIANS

The modern Indian gaming industry has its roots in the relatively modest bingo halls and card rooms operated by a number of tribes, most notably in California and Florida, in the late 1970s and 1980s. Almost as soon as tribes opened high-stakes bingo halls, states worked to close them.⁴ By relying on the general principle of federal Indian law that states may not regulate tribal lands or tribal governments, tribes created a market advantage: tribes could offer games with higher stakes, longer hours, and bigger jackpots than were allowed under state regulations.⁵

In 1987, the year before Congress enacted IGRA, the U.S. Supreme Court decided *California v. Cabazon Band of Mission Indians*.⁶ The case arose out of California's attempts to close a high-stakes bingo hall operated by the Cabazon Band of Mission Indians on its reservation near Palm Springs. As California law permitted charitable bingo games, but limited jackpot amounts and restricted the use of revenue to charitable purposes, the state considered the tribe's bingo games illegal. California acknowledged that states ordinarily lacked authority over tribal lands, but argued that Public Law 280 authorized application of California's bingo regulations on the tribes' reservations.⁷ Enacted in 1953,

2. 25 U.S.C. §§ 2701-2721 (2000).

3. ALAN MEISTER, CASINO CITY'S INDIAN GAMING INDUSTRY REPORT 10-11, 14 (Newton: Casino City Press 2008) (2008-09).

4. Tribes prevailed in challenging state assertion of authority over reservation gambling operations. See *Barona Group of Capitan Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982); *Seminole Tribe v. Butterworth*, 658 F.2d 310 (5th Cir. 1981); *Oneida Tribe of Indians v. Wisconsin*, 518 F. Supp. 712 (W.D. Wis. 1981).

5. See Kevin K. Washburn, *Federal Law, State Policy, and Indian Gaming*, 4 NEV. L.J. 285, 294-95 (2004).

6. 480 U.S. 202 (1987).

7. See *id.* at 207-08; Act of Aug. 15, 1953, ch. 505, § 2, 67 Stat. 588-90 (codified as amended at 18 U.S.C. § 1162, 28 U.S.C. § 1360 and other scattered sections in Titles 18 U.S.C. and 28 U.S.C.

Public Law 280 gave certain states, including California, a broad grant of criminal jurisdiction and a limited grant of civil jurisdiction over tribes within their borders.⁸

The *Cabazon* Court explained that if California's gambling laws were criminal prohibitions against gambling, the state could enforce them against the tribes under Public Law 280.⁹ The extent of the state's civil jurisdiction was another matter. In an earlier case, the Supreme Court had ruled that Public Law 280's grant of civil jurisdiction did not provide broad authority for state regulation generally but rather was limited to private civil litigation in state court—that is, the statute conferred adjudicatory, rather than regulatory, civil jurisdiction.¹⁰ Thus, if California's gambling laws were civil regulatory laws, the state did not have authority to enforce them against the tribes.

The “criminal/prohibitory-civil/regulatory” distinction required examination of state public policy concerning gambling to determine whether state law constituted a criminal prohibition against gambling generally or mere civil regulation of legalized gambling. At the time, California operated a state lottery and permitted pari-mutuel horserace wagering, bingo, and card games. “In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery,” the *Cabazon* Court reasoned, “we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.”¹¹ *Cabazon*'s bottom line was that as long as gambling did not violate state public policy, tribes could operate and regulate their own gaming establishments free of state interference.¹²

(2006)).

8. In Public Law 280 states, state governments exercise some power over tribes; in non-Public Law 280 states, the state has less authority over tribes within its borders.

9. 480 U.S. at 208.

10. See *Bryan v. Itasca County*, 426 U.S. 373 (1976). For an examination of *Bryan* and its impact on tribal gaming law, see Kevin K. Washburn, *The Legacy of Bryan v. Itasca County: How an Erroneous \$147 County Tax Notice Helped Bring Tribes \$200 Billion in Indian Gaming Revenue*, 92 MINN. L. REV. 919 (2008).

11. *Cabazon*, 480 U.S. at 210-11. The Court also rejected the state's assertion of jurisdiction on other grounds, including the federal Organized Crime Control Act of 1970 and the strength of the state's interest. See *id.* at 213-14, 216-21.

12. *Id.* at 213 n.13. Despite the fact that California's gaming laws were enforceable through criminal penalties, the Court explained that the state's approach to gambling was regulatory rather than prohibitory, as California permitted gaming (albeit subject to regulation) rather than prohibited it altogether. The fact that “an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it into a criminal law” falling within the state's criminal jurisdiction under Public Law 280. *Id.* at 211. Instead, said the Court, the “shorthand test” under the “criminal/prohibitory” and “civil/regulatory” distinction is whether state public policy condones the conduct. *Id.* at 209. Had California law strictly prohibited gambling through criminal penalties, then, under the *Cabazon* analysis, its laws would have been enforceable on the tribes' reservations through the state's Public Law 280 criminal jurisdiction. See, e.g., Washburn, *Federal Law, State Policy, and Indian Gaming*, *supra* note 5, at 289. Presumably, only Public Law 280 states would have authority to enforce their criminal/prohibitory laws on reservations. But even in non-Public Law 280 states, federal law, notably the Johnson Act, 15 U.S.C. § 1175(a) (2000), limited tribes' ability to operate gaming. See, e.g., Alex Tallchief Skibine, *Scope of Gaming, Good Faith Negotiations and the Secretary of Interior's Class III Gaming Procedures: Is I.G.R.A. Still a Workable Framework After Seminole?*, 5 GAMING L. REV. 401, 401 (2001).

B. THE INDIAN GAMING REGULATORY ACT OF 1988

After *Cabazon*, states and commercial gaming interests turned to Congress, where they vociferously lobbied for state regulation.¹³ Tribes, armed with their victory in the Supreme Court, argued for exclusive tribal regulation or, short of that, federal regulation. Faced with these disparate positions, Congress's *Cabazon* "fix" took the form of a political compromise meant to bridge the gap between the state and tribal positions, to balance state and tribal authority, and to ensure that gaming was available to tribal governments as a means of generating revenue in accord with federal interests in tribal self-sufficiency and reservation economic development.¹⁴

Congress enacted IGRA on October 17, 1988, with the purpose of codifying tribes' right to conduct gaming on Indian lands as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments, and to provide sufficient regulation to ensure legality and to protect the financial interests of gaming tribes.¹⁵ To give effect to the political compromise between state and tribal authority, IGRA categorizes types of gambling by "class" and assigns regulatory authority accordingly.¹⁶ Bingo and similar games, or "Class II" gaming, are regulated by tribes with some federal oversight.¹⁷ State interests in preventing the infiltration of organized crime and controlling gambling generally were most persuasive to Congress in the context of the "cash business" of casinos. At the same time, casino-style gaming was more lucrative than bingo and had greater potential to fuel reservation economic development, a key goal of federal Indian policy. So, for casino-style gambling, or "Class III" gaming, IGRA requires a "tribal-state compact," a negotiated agreement between the tribe and the state governing casino-style gaming on the tribe's reservation.¹⁸

13. Alexander Tallchief Skibine, *Cabazon and Its Implications for Indian Gaming*, in INDIAN GAMING: WHO WINS? 67, 68 (Angela Mullis & David Kamper eds., 2000). According to U.S. Senator Harry Reid (D-Nev.), one of IGRA's architects, after the Court decided *Cabazon*, "there was little choice except for Congress to enact laws regulating gaming on Indian lands. The alternative would have been for the rapid and uncontrolled expansion of unregulated casino type gambling on Indian lands." Harry Reid, *Commentary, The Indian Gaming Act and the Political Process*, in INDIAN GAMING AND THE LAW 17 (William R. Eadington ed., 2d ed. 1998).

14. For a detailed discussion of IGRA's legislative history, see Roland J. Santoni, *The Indian Gaming Regulatory Act: How Did We Get Here? Where Are We Going?*, 26 CREIGHTON L. REV. 387 (1993). See also KATHRYN R.L. RAND & STEVEN ANDREW LIGHT, INDIAN GAMING LAW AND POLICY 29-33 (2006).

15. 25 U.S.C. § 2702 (1988). Additionally, Congress enacted IGRA to establish an independent federal regulatory authority in the form of the National Indian Gaming Commission (NIGC). *Id.*

16. *Id.* § 2703.

17. *Id.* §§ 2703(7), 2710(a)-(c). "Class I" gaming consists of traditional tribal games of chance, associated with tribal ceremonies, and is subject to exclusive tribal jurisdiction. *Id.* §§ 2703(6), 2710(a)(1).

18. *Id.* §§ 2703(8), 2710(d). To engage in Class III gaming, a tribe first must formally request that the state enter into compact negotiations with the tribe. Once the state receives the tribe's request, "the State shall negotiate with the Indian tribe in good faith to enter into such a compact." *Id.* § 2710(d)(3)(A). Although IGRA does not dictate that a tribal-state compact must provide for state regulation of Class III gaming, compacts typically have done so. Carole E. Goldberg et al., *Amici Curiae Brief of Indian Law Professors in the Case of Hotel Employees and Restaurant Employees International Union v. Wilson*, in INDIAN GAMING: WHO WINS?, *supra* note 13, at 62. The tribe retains

Generally speaking, IGRA expressly prohibits states from seeking, through a tribal-state compact, to tax or charge the tribe a fee for the right to engage in casino-style gaming.¹⁹ However, there are three types of direct payments made by tribes to states and local governments in relation to gaming, commonly known as revenue sharing.²⁰ First, IGRA allows for direct payments to defray the costs of regulating Class III gaming activities.²¹ Second, IGRA allows tribes to use gaming profits to “help fund operations of local government agencies.”²² Third, despite IGRA’s prohibition against direct state taxation, the U.S. Secretary of the Interior, who is responsible for reviewing and approving gaming compacts between tribes and states,²³ has allowed voluntary compact payments by tribes to states in exchange for the state’s grant of valuable economic benefits.²⁴ Such payments to a state must be deemed “appropriate in light of the benefit conferred on the tribe.”²⁵ Specifically, the Secretary has adopted a practice whereby payments by a tribe must not exceed the value of the benefits received by the tribe.²⁶ While acceptable types of benefits to tribes have not been enumerated by the Secretary, one example is given: “substantial exclusivity.”²⁷ According to the Secretary’s practice, other benefits may be conferred upon a tribe in exchange for revenue sharing, but an economic analysis of the benefits is required in order to demonstrate appropriateness.²⁸

Many tribes make one or more of these three types of direct payments to state and local governments. The percentages and dollar amounts of direct

the right to concurrent regulation of its Class III gaming, so long as tribal regulation is not inconsistent with or less stringent than the state’s regulation as provided in the compact. *Id.* § 2710(d)(5). Under IGRA, the state’s good faith duty is enforceable through a legal cause of action in federal court. *See id.* § 2710(d)(3)(A), (d)(7)(A)(i). In its landmark decision in *Seminole Tribe v. Florida*, 517 U.S. 44, 47 (1996), however, the Supreme Court ruled that state sovereign immunity was a valid defense to IGRA’s cause of action. As a result, tribes may utilize IGRA’s enforcement mechanism only when the state consents to suit. “The Court’s decision dramatically turned the tables on tribes by removing the protections for tribal authority from IGRA.” Kathryn R.L. Rand & Steven Andrew Light, *How Congress Can and Should “Fix” the Indian Gaming Regulatory Act: Recommendations for Law and Policy Reform*, 13 VA. J. SOC. POL’Y & L. 396, 415 (2006).

19. 25 U.S.C. § 2710(d)(4) (providing that aside from reimbursement of the state’s regulatory costs, “nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe . . .”). Additionally, “[n]o State may refuse to enter into the negotiations . . . based upon the lack of authority . . . to impose such a tax, fee, charge, or other assessment.” *Id.* A state’s demand for direct taxation is evidence that the state has failed to negotiate in good faith. *Id.* § 2710(d)(7)(B)(iii)(II).

20. For a discussion, *see* MEISTER, *supra* note 3, at 6-7.

21. 25 U.S.C. § 2710(d)(3)(C)(iii) (including in the list of permissible compact provisions “the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activities”).

22. *Id.* § 2710(b)(2)(B)(v).

23. *Id.* § 2710(d)(3)(B) (providing that a tribal-state compact may take effect “only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register”).

24. *See Oversight Hearing on the Indian Gaming Regulatory Act Before the S. Comm. on Indian Affairs*, 108th Cong. 2 (2003) (statement of Aurene M. Martin, Acting Assistant Secretary-Indian Affairs, Dep’t of the Interior), available at <http://indian.senate.gov/2003hrgs/070903hrg/martin.PDF>.

25. *Id.*

26. *Id.*

27. *Id.*

28. *See id.*

payments by tribes vary substantially, depending on a host of factors, including: prevailing economic climate; whether the gaming at issue was new or existing; actual or expected performance of gaming operations, depending on whether gaming at issue was new or existing; degree of competition; types of gaming offered; and the relative bargaining positions of a state and tribe at the time revenue sharing was negotiated.²⁹ In calendar year 2007, the total of all identifiable direct payments to state and local governments was approximately \$1.3 billion.³⁰

As a legal codification of the political compromise between tribal and federal interests on the one hand and state interests on the other, IGRA's compact provisions reflect congressional efforts to balance these competing interests as well as state and tribal authority.³¹ Overall, through IGRA, Congress sought to encourage and protect Indian gaming as a means of furthering federal and tribal goals of tribal economic development, self-sufficiency, and strong tribal governments.

III. THE INDIAN GAMING INDUSTRY³²

A. CURRENT STATE OF INDIAN GAMING

In calendar year 2007, the most current year for which data are available, there were 230 tribes operating 425 gaming facilities in 28 states.³³ Twenty-three of these states had some form of Class III gaming, while five states only had Class II gaming. In total, Indian gaming generated approximately \$26.5 billion in gaming revenue and \$3.1 billion in non-gaming revenue (i.e., revenue from hotels, restaurants, entertainment, and shopping at Indian gaming facilities).³⁴ Indian gaming facilities, including non-gaming operations, directly supported approximately 346,000 jobs and paid about \$12 billion in wages to employees.³⁵

B. GROWTH OF INDIAN GAMING

Since IGRA's enactment in 1988, the scope of tribal gaming operations has undergone an impressive transformation from small bingo facilities to large-scale casinos.³⁶ A growing number of tribes have created resort/destination

29. Alan Meister, *Tribal-State Gaming Compacts and Revenue Sharing: A California Case Study*, 7 GAMING L. REV. 347, 350 (2003).

30. MEISTER, *supra* note 3, at 55. Note that data on some local revenue sharing were not available. Thus, the figure noted above is conservative.

31. See generally STEVEN ANDREW LIGHT & KATHRYN R.L. RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE (2005) (providing an in-depth examination of the political and legal compromises present in Indian gaming law).

32. See MEISTER, *supra* note 3, and unless otherwise noted, all data referred to in this section comes from that source.

33. *Id.* at 10-11.

34. *Id.* at 13.

35. *Id.* at 54.

36. *Id.* at 14.

casinos with wide-ranging non-gaming offerings, including hotels, restaurants, entertainment, shopping, and much more. On a nationwide basis, tribal gaming revenue has grown from approximately \$121 million in 1988 to an estimated \$26.5 billion in calendar year 2007.³⁷ This reflects a 200-fold increase over twenty years. Even over just the past six years, from 2001 to 2007, Indian gaming revenue has more than doubled (from \$13.2 billion).³⁸

Also notable has been the tremendous growth of non-gaming revenue at Indian gaming facilities nationwide.³⁹ Non-gaming revenue rose approximately 9% in calendar year 2007, nearly double the growth rate of gaming revenue and more than double that generated in 2001.⁴⁰ These statistics reflect trends toward an increase in and a greater variety of non-gaming amenities at Indian gaming facilities, the expansion of existing facilities, and movement toward resort/destination casinos.⁴¹

Along the path from the passage of IGRA through 2007, Indian gaming has progressed through several different stages of development. From 1988 through 1995, Indian gaming grew at a very rapid pace, with an average annual growth rate of 72%.⁴² Then for about the next decade, from 1996 through 2005, the annual growth rate settled down to around 15%.⁴³ Generally speaking, this growth pattern comports with what is known about markets more broadly. In their infancy, markets tend to grow faster than when they are more mature.

Since about 2005, Indian gaming on a nationwide basis has started to see a noticeable slowdown. The gaming revenue growth rate dropped from 15% in calendar years 2002 through 2005 to 10% in 2006, and then most recently down to 5% in 2007.⁴⁴ That is not to say that Indian gaming has performed poorly in recent years—just not as well as it has in the past. In fact, the 5% growth rate in 2007 is still quite respectable, especially considering the state of the U.S. economy and the nationwide performance of commercial casinos, which experienced only about 2% growth in 2007.⁴⁵

The continuing slowdown of the Indian gaming industry over the last few years largely reflects the negative impact of public policies that artificially restrict the supply of Indian gaming.⁴⁶ These public policies include existing and proposed legislation, regulations, and tribal-state gaming compacts.⁴⁷ As

37. *Id.* at 14 tbl.7.

38. *Id.*

39. *Id.* at 13 tbl.6.

40. *Id.* at 13 tbl. 5 and tbl. 6, 14 tbl. 7.

41. *Id.* at 48-50.

42. *Id.* at 14 tbl. 7. All cited average annual growth rates are compound annual growth rates (CAGRs).

43. *Id.*

44. *Id.*

45. *Id.* at 42.

46. *Id.* at 50-51. It is noted that the downturn in the U.S. economy began at the end of 2007. Thus, the performance of Indian gaming in calendar year 2007 was only minimally impacted by the general economic climate.

47. *Id.* at 51. Federal statutes, regulations, and tribal-state compacts have had the effect of restricting the scope and growth of the industry. For example, because IGRA authorizes tribes to

discussed below, this slowdown of Indian gaming somewhat clouds the short-term and long-term future outlook of Indian gaming.⁴⁸

An important point should be made about the foregoing data, analyses, and observations regarding the growth of Indian gaming. Although Indian gaming is often talked about in aggregate nationwide terms, it is important to keep in mind that it is in fact very fragmented.⁴⁹ As noted above, there are 230 distinct tribes with 425 unique gaming facilities in 28 states.⁵⁰ Furthermore, the economic performance of Indian gaming has varied widely from state to state, tribe to tribe, and facility to facility. This wide variation has depended on a variety of factors, including: legal, regulatory, and political environments; class of Indian gaming; types of games offered; and market conditions, such as the size of the potential customer base, proximity to that customer base, patron demographics, competition, and the maturity level of the market.⁵¹

Thus, while Indian gaming on the whole has performed well over time, this is not necessarily the case in any particular state, or for any particular tribe or facility. In fact, there has been a high degree of concentration of gaming revenue within the industry—that is, a large proportion of gaming revenue is generated by a small number of Indian gaming tribes and facilities. According to statistics from the National Indian Gaming Commission (NIGC), in 2007, the top 6% of Indian gaming facilities generated over 40% of total gaming revenue, the top 18% generated over 70% of total revenue, and the top 30% generated 85% of total revenue.⁵² On the flip side, this means that many Indian gaming facilities generated a relatively small amount of gaming revenue—at the bottom, nearly one-third of Indian gaming facilities generated less than 3% of total revenue.

Gaming revenue has also been very geographically concentrated within Indian gaming. The top two revenue-generating states, California and Connecticut, accounted for about 39% of all gaming revenue at Indian gaming facilities in 2007.⁵³ Furthermore, the top five states—Oklahoma, Arizona, and Florida, along with California and Connecticut—accounted for roughly 62%, and the top ten states—adding Washington, Minnesota, Wisconsin, Michigan, and New York—accounted for approximately 86% of all gaming revenue at

conduct only “such gaming” as is permitted by state law, *see* 25 U.S.C. §§ 2710(b)(1)(A), 2710(d)(1)(B) (1988), in some states Indian gaming is limited to Class II gaming, as noted above. For a discussion of the “scope of gaming” issue, *see* RAND & LIGHT, INDIAN GAMING LAW AND POLICY, *supra* note 14, at 70-79. And in some states, tribal-state compacts limit the type and number of games a tribe may offer in its gaming facility, or limit the number of facilities a tribe may operate. In other words, the market for Indian gaming would allow for greater growth in the absence of the restrictions placed on the industry by federal law and regulations, as well as tribal-state compacts.

48. *See infra* Part VI.B.

49. On the differences in tribal experiences with Indian gaming in relation to a “spectrum of success,” *see infra* Part V.

50. MEISTER, *supra* note 3, at 10-11.

51. *Id.* at 48.

52. National Indian Gaming Commission, Press Release, NIGC Announces 2007 Indian Gaming Revenues (June 18, 2008), <http://www.nigc.gov/ReadingRoom/PressReleases/PressReleasesMain/PR93062008/tabid/841/Default.aspx> [hereinafter NIGC Press Release].

53. MEISTER, *supra* note 3, at 21 tbl.14.

Indian gaming facilities.⁵⁴

IV. THE ECONOMIC AND FISCAL IMPACTS OF INDIAN GAMING⁵⁵

A. OVERVIEW

On the whole, Indian gaming has made and continues to make significant contributions to the U.S. economy.⁵⁶ Specifically, it has stimulated economic activity, created jobs, and provided wages—all of which have benefitted tribal economies and generated tax revenue to federal, state, and local governments.⁵⁷ In addition, as explained above, many tribes make direct payments to other governments in the process of operating gaming facilities. The sections below describe these positive economic and fiscal contributions of Indian gaming to the U.S. economy, from both theoretical and empirical points of view.⁵⁸

B. METHODOLOGIES

1. *Economic Contribution Analysis*⁵⁹

In order to measure the contribution of Indian gaming to the U.S. economy, previous research and analyses by one of the authors of this article has utilized input-output analysis. Input-output analysis is a standard economic tool for modeling an economy by accounting for the economic interdependence among industries, households, and government institutions. It can be used to measure the economic contribution of one or more projects, businesses, or industries to an economy. Using an input-output analysis, the initial economic activity of an industry in an economy can be traced to determine secondary economic activity that is driven by the initial activity.

The initial economic activity is referred to as the direct effect. This direct effect is the “input” into the input-output analysis. In the case of the Indian gaming industry, the direct effect is casino patron expenditures, both gaming and non-gaming. As the initial spending at gaming facilities is in turn spent and re-spent throughout the economy, there is subsequent secondary economic activity.

54. *Id.*

55. See MEISTER, *supra* note 3, and unless otherwise noted, all data referred to in this section comes from that source.

56. MEISTER, *supra* note 3, at 54.

57. *Id.* Although states may not tax tribal gaming, Indian gaming facilities generate numerous activities that are subject to state and federal taxation, including income earned by employees living off the reservation, money or prizes won by non-reservation residents, and goods and services provided by non-tribal vendors. See *infra* Part IV.B.1.

58. In addition to economic benefits, Indian gaming also generates social benefits (e.g., increases in tribal programs and services for Native Americans; decreased reliance on welfare programs by Native Americans; and the promotion of tribal economic development, tribal self-sufficiency, and strong tribal governments). In addition, there may at some level be social and economic costs. For an analysis of how and why to disaggregate and consider tribal gaming’s costs and benefits to different stakeholders and jurisdictions, and across study areas, see LIGHT & RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY, *supra* note 31, at 77-104.

59. MEISTER, *supra* note 3, at 5-6.

This includes the iteration of businesses purchasing from other businesses, and household spending that is stimulated by employee wages earned directly (at the casino) or indirectly (from other businesses) as a result of the operation of Indian gaming facilities.⁶⁰ These secondary effects continue until leakages, including imports, profits, and savings, stop the re-spending cycle. The total economic contribution of an industry is equal to the sum of the direct and secondary effects. An input-output analysis typically generates multipliers that can be applied to the direct effect to compute the secondary effects, and thus the total effect.

In conducting an economic contribution analysis, a study area must be defined. The study area is the geographic region in which one wishes to measure economic contribution. It can be defined as one or more states, counties, cities, or zip codes. The study area used in the economic impact analyses cited herein was the United States.⁶¹

An input-output analysis yields three standard measures of economic activity: output, wages, and jobs. Output equals the dollar value of production or sales. Wages consist of income earned by households, including self-employed individuals. Wages include tips and benefits, such as health insurance and retirement payments. Jobs are person-years of employment.

The input-output analysis cited herein was conducted using the IMPLAN economic impact modeling system.⁶² IMPLAN was originally developed by the U.S. Department of Agriculture's Forest Service in cooperation with the Federal Emergency Management Agency and the U.S. Department of the Interior's Bureau of Land Management.⁶³ IMPLAN has been in use since 1979 and is widely used and accepted for conducting economic impact and economic contribution analyses.⁶⁴ The data and accounts underlying IMPLAN closely follow the accounting conventions used in the "Input-Output Study of the U.S. Economy" by the U.S. Bureau of Economic Analysis and the rectangular format recommended by the United Nations.⁶⁵

Because of Indian gaming's unique situation, namely that gaming facilities are operated by tribal governments rather than commercial enterprises, the standard IMPLAN model and underlying data were customized in the cited analyses to reflect the average wage per employee and average output (i.e., revenue) per employee at Indian gaming facilities; transfers of profits from Indian gaming operations to tribes and the uses of such profits by tribal governments; and direct payments made by tribes to federal, state, and local

60. The two types of secondary effects discussed above are commonly referred to as indirect and induced effects.

61. *Id.* at 5.

62. *Id.* at 5-6. See Minnesota IMPLAN Group, Inc., http://implan.com/index.php?option=com_frontpage&Itemid=1 (last visited Jan. 28, 2009).

63. DOUG OLSON & SCOTT LINDALL, IMPLAN PROFESSIONAL SOFTWARE, ANALYSIS, AND DATA GUIDE (1999).

64. *Id.*

65. *Id.*

governments.⁶⁶

2. Fiscal Benefits Analysis⁶⁷

Fiscal benefits generally refer to the financial gains to governmental bodies from a project, business, or industry. These benefits may accrue to federal, state, and local governments. In terms of Indian gaming, significant fiscal benefits are generated for each of these types of governments. First and foremost, however, Indian gaming directly benefits tribal governments. As intended by IGRA, tribal governments are the primary beneficiaries of Indian gaming.⁶⁸ Tribes may use gaming revenue to fund tribal government operations and programs, provide for the general welfare of their constituents, and promote tribal economic development.⁶⁹ Since 1988, tribes have historically used gaming profit to support a variety of social and economic programs and services, including health care, housing development, educational programs, elderly care, vocational training, environmental services, loans, scholarships, and business development.⁷⁰

Indian gaming also generates significant fiscal benefits for non-tribal governments. In the cited research,⁷¹ two types of non-tribal fiscal benefits were identified and quantified: tax revenue and direct payments by tribes.

The first type of fiscal benefit to federal, state, and local governments is tax revenue. There are only a few situations where taxes resulting from Indian gaming are not paid to non-tribal governments: first, tribes, as sovereign governments, do not pay corporate income taxes on revenue or property taxes on tribal land; second, tribal members who both live and work on an Indian reservation do not pay state income taxes; and third, no state or local sales/excise taxes are levied on purchases by tribal members on reservations. However, taxes are paid in all other circumstances, including all secondary economic activity generated by Indian gaming. Taxes on secondary economic activity include: corporate profits tax, income tax, sales tax, excise taxes, property tax, and personal non-taxes, such as motor vehicle licensing fees, fishing/hunting license fees, other fees, and fines. Tax revenue is calculated by applying appropriate tax rates to taxable profit, income, and purchases. In the cited research,⁷² IMPLAN was used to estimate tax revenue generated by Indian gaming.

The second type of fiscal benefit to federal, state, and local governments is

66. MEISTER, *supra* note 3, at 6.

67. *Id.* at 6-7.

68. One of Congress's purposes in adopting IGRA's regulatory scheme was "to ensure that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. § 2702(2) (1988).

69. *See id.* § 2710(b)(2)(b).

70. For summaries and discussions of tribal uses of gaming revenue, see generally MEISTER, *supra* note 3; LIGHT & RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY, *supra* note 31; RAND & LIGHT, INDIAN GAMING LAW AND POLICY, *supra* note 14; NATIONAL INDIAN GAMING ASSOCIATION, AN ANALYSIS OF THE ECONOMIC IMPACT OF INDIAN GAMING IN 2005 (2006), available at http://indiangaming.org/NIGA_econ_impact_2005.pdf.

71. MEISTER, *supra* note 3, at 55-60.

72. *Id.* at 6, 55.

direct payments. As noted above, there are three types of direct revenue-sharing payments made in relation to Indian gaming: payments to defray the costs of regulating Class III gaming activities, payments to local governments to help fund operations of local government agencies, and voluntary compact payments by tribes to states in exchange for being granted valuable economic benefits. In the cited research,⁷³ data were collected from tribal and non-tribal governments, where possible, and estimated when not available.

C. ECONOMIC AND FISCAL IMPACTS IN CALENDAR YEAR 2007

Using the aforementioned methodologies for measuring economic and fiscal impacts, it was estimated that in 2007 Indian gaming directly and indirectly generated approximately \$85.8 billion in output, 732,000 jobs, \$29.4 billion in wages, and \$14.8 billion in tax revenue and direct payments to federal, state, and local governments.⁷⁴

V. THE SPECTRUM OF SUCCESS⁷⁵

As noted above, 230 tribes operated some 425 gaming establishments in 2007. This number increased in 2008. Though tribes—and tribal casinos, for that matter—are far from uniform, most tribes that have chosen to operate gaming do so as a means of overcoming historically rooted socioeconomic adversity.⁷⁶ One recent example is the Navajo Nation's decision to open its first casino, the Fire Rock Casino near Gallup, New Mexico, in 2008. Faced with an unemployment rate of more than 50% and poverty levels exceeding 40%, the Nation expects the casino's projected \$32 million in annual revenue and 1,000 new jobs, along with the additional benefits from other planned casinos, to improve the quality of life for the Nation's more than 200,000 reservation residents.⁷⁷

73. *Id.* at 6-7, 55-60.

74. *Id.* at 54-55.

75. See LIGHT & RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY, *supra* note 31, at 9-11 (discussing the "spectrum" of tribal experiences with gaming and the "spectrum of success" of gaming tribes).

76. Only 230 of the 562 federally recognized tribes (41%) operate gaming. Because IGRA authorizes Indian gaming only in those states that allow some form of legalized gambling, gaming simply is not an option for tribes located in states that disallow any form of gambling. See 25 U.S.C. §§ 2710(b)(1), 2710(d)(1) (1988) (limiting Class II and Class III gaming to tribes in those states that "permit . . . such gaming for any purpose by any person, organization, or entity"). In some states, Indian gaming is limited to bingo and similar games because state public policy or other law prohibits casino-style gaming. For example, although Alaska is home to some 225 tribes and Native Villages, it has only a handful of tribal gaming operations offering mainly bingo and pull-tabs. Isolated locales or lack of financial resources also may restrict a tribe's ability to open or sustain a casino. Again using Alaska as an example, the state's extraordinarily rural locales and limited reservation land may further restrict any possible expansion of tribal gaming in Alaska, even with changes in state gambling policy. See David Hulen, *Alaska Plays by Own Rules*, ANCHORAGE DAILY NEWS, May 7, 1995, at B1. Lastly, in some states, there are no federally recognized tribes.

77. See, e.g., *Navajo Nation Opens its First Casino in New Mexico*, FORBES, Nov. 20, 2008, available at http://www.usatoday.com/travel/destinations/2008-12-17-fire-rock-casino_N.htm?csp=Forbes; Dennis Wagner, *Navajos Bet First Casino Is a Winner*, ARIZ. REPUBLIC,

As many tribes face high poverty and unemployment rates and accompanying social ills, basic quality-of-life indicators for tribal members living on reservations still lag significantly behind those of other ethnic groups in the United States,⁷⁸ yet there have been marked improvements for many Native American communities, largely due to gaming revenue.⁷⁹ And as detailed above, the economic and social benefits of tribal gaming extend beyond reservation boundaries as well, ranging from increased tax revenues to decreased public entitlement payments to the disadvantaged.⁸⁰

A. THE ENDS OF THE SPECTRUM

Gaming is a major source of government revenue for many tribes. Yet annual revenue among the 425 tribal casinos across the United States ranges from more than \$1 billion to less than \$3 million.⁸¹ As noted above, in 2007, just 6% of tribal gaming operations earned more than \$250 million, accounting for nearly 42% of the total industry revenue. On the other end of the spectrum, over half of all tribal gaming facilities earned \$25 million or less, and one out of every seven casinos earned less than \$3 million.⁸²

In terms of simple economics, this spectrum of success for tribal casinos is explained in large part by the old saw of “location, location, location”—one merely need compare a rural bingo hall on the Great Plains to a Las Vegas-style casino near major metropolitan areas, such as the phenomenally successful Connecticut casinos, Foxwoods Resort Casino, owned by the Mashantucket

Nov. 17, 2008, *available at* <http://www.azcentral.com/arizonarepublic/news/articles/2008/11/17/20081117navajocasino1115.html>.

78. See LIGHT & RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY, *supra* note 31, at 98 (discussing U.S. Census data concerning tribes).

79. See *id.* at 98-101 (providing examples of improvements in reservation quality of life); Jonathan B. Taylor & Joseph P. Kalt, Cabazon, *The Indian Gaming Regulatory Act, and the Socioeconomic Consequences of American Indian Governmental Gaming* (2005), <http://www.ksg.harvard.edu/hpaied/pubs/cabazon.htm>; Stephen Cornell et al., *American Indian Gaming Policy and its Socio-Economic Effects: A Report to the National Gambling Impact Study Commission* (1998), http://indiangaming.org/library/studies/1004-erg_98rept_to_ngisc.pdf. On the whole, from 1990 to 2000, both gaming and non-gaming tribes experienced economic growth at a rate three times that of the U.S. economy, but American Indians living on reservations remained four times as likely to live in poverty as the “average” American. HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT ET AL., *THE STATE OF THE NATIVE NATIONS: CONDITIONS UNDER U.S. POLICIES OF SELF-DETERMINATION* (2008).

80. See Part IV, *supra*; see also Jonathan B. Taylor, Matthew B. Krepps, & Patrick Wang, *The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities* (2000), *available at* http://www.ksg.harvard.edu/hpaied/pubs/pub_006.htm. For a summary of tribal gaming’s economic benefits to states and communities, see LIGHT & RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY, *supra* note 31, at 84 tbl.4.1. For a discussion of studies of Indian gaming’s socio-economic impacts, see LIGHT & RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY, *supra* note 31, at 77-104.

81. Together, the Mashantucket Pequot Tribe’s Foxwoods Resort Casino and the Mohegan Tribe’s Mohegan Sun Casino, both located in Connecticut, earned \$2.5 billion in 2007, and individually they are the highest revenue-generating Indian gaming facilities in the United States. MEISTER, *supra* note 3, at 29.

82. Though the NIGC does not report individual casino revenue, it groups tribal casinos according to annual gaming revenue ranges. Its data indicate that 59 tribal gaming operations earned less than \$3 million in 2007. See NIGC Press Release, *supra* note 50.

Pequots, and Mohegan Sun, owned by the Mohegan Tribe. For some, though, the uneven distribution of gaming profits among tribes is evidence of failed federal policy. *Time* magazine's December 2002 cover story, "Wheel of Misfortune," highlighted the Oglala Sioux Tribe in South Dakota as an example of "needy Native Americans" left behind by IGRA.⁸³ According to the article, the tribe's individual members did not benefit "at all" from Indian gaming because the modest profits of the tribe's Prairie Wind Casino would have amounted to "a daily stipend of just 16¢ for each of the 41,000 tribe members."⁸⁴

But, as Congress intended, tribal success may take more forms than mere profits as calculated in cash payments to individual tribal members (known as per capita payments).⁸⁵ Even modest casino profits may serve federal and tribal goals of building strong tribal governments, encouraging tribal self-sufficiency, and improving the quality of reservation life.⁸⁶ Tribal casinos also provide jobs and wages, in many cases to a high proportion of tribal members. In addition, even when tribal profits are not redistributed via per capita payments, gaming revenue still benefits tribal members, as IGRA requires tribes to use gaming revenue to fund tribal government operations or programs, provide for the general welfare of their members, and promote tribal economic development.⁸⁷ As John Yellow Bird Steele, then President of the Oglala Sioux Tribe, said in response to the *Time* magazine story, "Our gaming facility is not among the largest, but we would be hard pressed to replace the jobs and revenue that gaming generates."⁸⁸

B. INDIAN GAMING IN SOUTH DAKOTA

Indian gaming in South Dakota shares many similarities with Indian gaming in North Dakota.⁸⁹ Like tribes in North Dakota, the nine tribes with

83. Donald L. Barlett & James B. Steele, *Indian Casinos: Wheel of Misfortune—Who Gets the Money? (Part I)*, *TIME*, Dec. 16, 2002, at 44, 49.

84. *Id.*

85. Under IGRA, tribes may make per capita payments to tribal members after preparing a general revenue use plan in accordance with the five approved expenditures set forth in IGRA and with the approval of the Interior Secretary. 25 U.S.C. § 2710(b)(3) (1988).

86. Rand & Light, *How Congress Can and Should "Fix" the Indian Gaming Regulatory Act*, *supra* note 18, at 423-26; LIGHT & RAND, *INDIAN GAMING AND TRIBAL SOVEREIGNTY*, *supra* note 31, at 137-44.

87. 25 U.S.C. § 2710(b)(2)(B).

88. Rick Hill, *Some Home Truths About Indian Gaming*, *INDIAN COUNTRY TODAY*, Dec. 27, 2000, at A5. The *Time* magazine article was roundly criticized by tribal leaders. Tex G. Hall, then President of the National Congress of American Indians and chair of the Three Affiliated Tribes in North Dakota, called *Time*'s treatment of Indian gaming "misleading," pointing out the benefits of tribal gaming in the Great Plains. "My tribe's casino, very modest by Las Vegas standards," he wrote, "provides jobs to our people that are extraordinarily important to our economy, and revenue that our tribal government uses to provide services to the 10,000 members of our tribe. This is the case for the majority of tribes with gaming ventures." Tex G. Hall, "Letter to the Editors of *Time Magazine*," December 13, 2002, available at <http://www.americanindian.ucr.edu/discussions/gaming/letters/ncai.html>.

89. For a detailed description of tribes and Indian gaming in North Dakota, see LIGHT & RAND, *INDIAN GAMING AND TRIBAL SOVEREIGNTY*, *supra* note 31, at 111-18. For gaming statistics on Indian gaming in South Dakota and North Dakota, see MEISTER, *supra* note 3, at 11-13, 36, 38, 56-59.

land in South Dakota—the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, the Flandreau-Santee Sioux Tribe, the Lower Brule Sioux Tribe, the Oglala Sioux Tribe, the Rosebud Sioux Tribe, the Sisseton-Wahpeton Oyate, the Standing Rock Sioux Tribe, and the Yankton Sioux Tribe—have long histories of government-to-government relations with the United States, along with strong traditions of tribal identity and sovereignty that continue to shape the tribes' priorities as well as intergovernmental relations with state and federal government.

Another similarity is the staggering socioeconomic deficits faced by tribes in North and South Dakota during the 20th and into the 21st centuries. Reservations in North and South Dakota historically have been among the nation's poorest jurisdictions. In the early 1990s, unemployment rates on reservations in the states generally exceeded 50% and in some areas, topped 80%—unimaginable to most Americans familiar with single-digit unemployment rates.⁹⁰ In large part due to their relative isolation on reservations in rural states, economic opportunities available to South Dakota tribes are few. Tribal communities in the Dakotas typically achieved minimal commercial development—often not much beyond a local grocery store or gas station, and some homes went without such basic services as electricity, running water, or telephone service. South Dakota's counties with reservation communities are among the nation's poorest.⁹¹

Congress's enactment of IGRA in 1988 coincided with South Dakota's legalization of limited casino-style gambling in Deadwood.⁹² Like tribes elsewhere, tribes in South Dakota saw an opportunity to earn revenue, provide jobs, and address the dire socioeconomic conditions on their reservations. Three tribes, the Sisseton-Wahpeton Oyate, the Flandreau-Santee Sioux Tribe, and the Yankton Sioux Tribe, quickly negotiated compacts with the governor and opened the Dakota Sioux Casino near Watertown, the Royal River Casino at Flandreau, and the Fort Randall Casino near Wagner, respectively. These were

90. See N.D. INDIAN GAMING ASS'N, OPPORTUNITIES AND BENEFITS OF NORTH DAKOTA TRIBALLY OWNED CASINOS 3 (2000).

91. In South Dakota, Buffalo County, home to the Crow Creek Sioux Tribe and boasting a population that is 80% American Indian, is the poorest county in the U.S., with a poverty rate of more than 30% and a per capita income of \$5,200. See U.S. Census Bureau, State and County QuickFacts for Buffalo County, S.D., 2005 County-Level Poverty Rates for South Dakota, <http://quickfacts.census.gov/qfd/states/46/46017.html> (last visited Jan. 29, 2009); see also USDA Economic Research Service, <http://www.ers.usda.gov/Data/PovertyRates/PovListpct.asp?ST=SD&view=Percent> (last visited Jan. 29, 2009). Shannon, Ziebach, Todd, Corson, Dewey, and Jackson Counties in South Dakota have per capita incomes below \$10,000, as does Sioux County in North Dakota. *Id.* The Cheyenne River Reservation is located in Dewey and Ziebach Counties, the Oglala Sioux Tribe's Pine Ridge Reservation is located in Shannon and Jackson Counties, the Rosebud Reservation is in Todd County, and the Standing Rock Reservation is in Corson County. See generally South Dakota Office of Tribal Government Relations, Nine Tribes of South Dakota, <http://www.state.sd.us/oia/tribes.asp> (last visited Jan. 29, 2009). The Standing Rock Reservation straddles the border between North and South Dakota; on the North Dakota side, the reservation is located in Sioux County. *Id.*

92. See Associated Press, *20 Years Later, Gaming Industry Booming in South Dakota*, ABERDEEN AM. NEWS, Oct. 9, 2007, available at <http://www.aberdeennews.com/apps/pbcs.dll/article?AID=/20071009/FRONTPAGE/71009325>.

followed shortly by the Lower Brule Sioux Tribe's Golden Buffalo Casino and the Crow Creek Sioux Tribe's Lode Star Casino.⁹³ Today, each of the nine tribes in South Dakota operates at least one gaming facility.⁹⁴

Tribal gaming in South Dakota furthers reservation economic development, provides jobs on the reservations, and provides reliable revenue for tribal social programs.⁹⁵ The tribes have used gaming revenue to fund tribal government positions and services, provide health care and child care, build infrastructure, and generally provide for the welfare of tribal members.⁹⁶ As the comments of Charles Colombe, a past president of the Rosebud Sioux Tribe, indicate, the pressing needs of tribal members in South Dakota drive tribal government priorities: "What sort of sneakers do you get for a 12-year-old boy in foster care? What's the right size coat for a nine-year-old girl?"⁹⁷ While gaming revenue by itself cannot eradicate the dire socioeconomic conditions that persist on reservations in the Dakotas and throughout the Great Plains, it is undoubtedly making a difference in the quality of life for many tribal members.⁹⁸

VI. THE ECONOMIC FUTURE OF INDIAN GAMING

As stated at the outset of this article, Indian gaming is nearly synonymous with tribal economic development. Increasingly, though, tribes are using gaming as a foundation from which to grow and diversify gaming and non-gaming economic development initiatives, both on and off the reservation. In this section, we identify some current economic trends in Indian gaming, offer some

93. See South Dakota Legislative Research Council, *The Impact of the Indian Gaming Regulatory Act on State-Tribal Relations* (Issue Memorandum 94-42) (Aug. 7, 2000), at 2.

94. There are 12 tribal gaming facilities in South Dakota: Bear Soldier Bingo (Standing Rock Sioux Tribe); Children's Village Bingo (Oglala Sioux Tribe); CRST Bingo (Cheyenne River Sioux Tribe); Dakota Connection Casino & Bingo (Sisseton-Wahpeton Oyate); Dakota Sioux Casino (Sisseton-Wahpeton Oyate); Fort Randall Casino (Yankton Sioux Tribe); Golden Buffalo Casino and Resort (Lower Brule Sioux Tribe); Grand River Casino & Resort (Standing Rock Sioux Tribe); Lode Star Casino and Hotel (Crow Creek Sioux Tribe); Prairie Wind Casino (Oglala Sioux Tribe); Rosebud Casino (Rosebud Sioux Tribe); and Royal River Casino & Hotel (Flandreau-Santee Sioux Tribe). See MEISTER, *supra* note 3, at 96. Additionally, the Standing Rock Sioux Tribe operates the Prairie Knights Casino & Resort in Fort Yates, North Dakota, and the Sisseton-Wahpeton Oyate operates the Dakota Magic Casino in Hankinson, North Dakota. See *id.* at 87.

95. See, e.g., South Dakota Legislative Research Council, *supra* note 75, at 2.

96. See Roy F. Janisch, *Sovereignty, Indian Gaming, and Economic Development on the Lake Traverse Reservation of the Sisseton-Wahpeton Sioux Tribe (Oyate)*, 50 AM. BEHAVIORAL SCIENTIST 353, 361 (2006); Mark Van Norman, Address to the Western Governors' Association (Mar. 29, 2005) (transcript on file with authors). South Dakota also provides an example of Indian gaming revenue fueling tribal philanthropy: the Shakopee Mdewakanton Sioux Community, which operates the highly successful Mystic Lake Casino near the Twin Cities of Minneapolis and St. Paul, Minnesota, has helped to fund the Oglala Sioux Tribe's shelter for victims of domestic violence, ambulance station, and casino expansion on the Pine Ridge Reservation. Heron Marquez Estrada, *Tribe Puts Money to Good Work*, STAR TRIB. (Minneapolis-St. Paul) (Oct. 3, 2007) available at <http://www.startribune.com/local/11591151.html>.

97. See Van Norman, *supra* note 92.

98. See LIGHT & RAND, *INDIAN GAMING AND TRIBAL SOVEREIGNTY*, *supra* note 31, at 115-16, 140-44.

measured predictions about the economic future of Indian gaming, and assess opportunities for tribal economic diversification.

A. CURRENT ECONOMIC TRENDS

1. Revenue Sharing

One ongoing trend has been an increase in direct payments by tribes to state and local governments, fueled in part by state budget crises and states' resistance to increasing taxes. In 2007, total revenue sharing by tribes was approximately \$1.3 billion, including reimbursements of regulatory costs, local revenue sharing, and state revenue sharing.⁹⁹ This was up approximately 3.4% from 2006. As with the 2006 revenue-sharing growth rate (9%), it was a little lower than the growth rate for gaming revenue at Indian gaming facilities. However, this was not the case in 2004 and 2005, when revenue sharing grew faster than gaming revenue. Revenue sharing grew 24% in 2004 and 19% in 2005, as compared to approximately 15% growth of gaming revenue in both years. Overall, since 2003, the earliest date for which data are available, the average annual growth rate of revenue sharing is approximately 14%.

Generally, the increases in revenue sharing have come about as part of new and renegotiated tribal-state gaming compacts. In some ways, the increased revenue sharing has been to the mutual benefit of the tribes and states involved in the new or amended compacts. The tribes have typically received some sort of benefit in exchange for the increased revenue-sharing payments. These benefits have included the introduction of new gaming facilities, increases in the number of gaming machines that can be operated, the operation of games not previously allowed, geographic and product exclusivity, and the relaxation of certain gaming regulations, such as wager limits and hours of operation. In some cases, tribes also have agreed to the expansion of certain regulations or stricter regulations, including increases in the minimum gambling age and mitigation of potentially negative socioeconomic impacts of Indian gaming.¹⁰⁰

2. Tribal-Corporate Partnerships

Another ongoing trend in Indian gaming has been the development of tribal-corporate partnerships and joint ventures. Several tribes have partnered with casino giant Harrah's Entertainment, which owns or manages casino resorts in four continents primarily under the Harrah's, Caesars, and Horseshoe brand names. For Native American tribes in the United States, Harrah's manages Harrah's Ak-Chin Casino Resort outside of Phoenix, Arizona, owned by the Ak-Chin Indian Community; Harrah's Rincon Casino & Resort near San Diego,

99. MEISTER, *supra* note 3, at 55. Note that data on some local revenue sharing were not available. Thus, the figure used above is conservative.

100. See Steven Andrew Light, Kathryn R.L. Rand, & Alan P. Meister, *Spreading the Wealth: Indian Gaming and Revenue-Sharing Agreements*, 80 N.D. L. REV. 657 (2004) (discussing tribal-state revenue-sharing agreements).

California, owned by the Rincon Band of Luiseno Mission Indians; and Harrah's Cherokee Casino & Hotel in Cherokee, North Carolina, owned by the Eastern Band of Cherokee Indians.¹⁰¹

In 2008, the MGM Grand at Foxwoods opened a \$700 million tribally-owned joint venture between the Mashantucket Pequot Tribe and MGM Mirage, another casino giant that owns and operates casinos in Nevada, Mississippi, and Michigan, and has large investments in casinos in Nevada, New Jersey, Illinois, and Macau. The MGM Grand at Foxwoods boasts 1,400 slot machines, 825 hotel rooms, 5 restaurants, and a 4,000-seat theater.¹⁰²

Station Casinos, a leading operator of casinos in Nevada, also has partnered with tribes. It currently manages Thunder Valley Casino near Sacramento, California on behalf of the United Auburn Indian Community, and it is also currently working with tribes to develop three casinos in California and one in Michigan.¹⁰³ If and when these facilities are developed, Station Casinos would also manage them on behalf of the respective tribes.

Another interesting and unique partnership involved the Seminole Tribe of Florida and Hard Rock International, the music-based entertainment and leisure company operating over 130 casino, hotel, and cafe venues in more than 40 countries around the world.¹⁰⁴ In 2004, the Seminole Tribe opened two Seminole Hard Rock Hotels and Casinos in Florida. Just three years later, the Seminole Tribe acquired the Hard Rock brand, making the tribe the owner of a global business.¹⁰⁵ In another Hard Rock-related venture, the Cherokee Nation announced in late 2008 an agreement to brand its expanding hotel and casino near Tulsa, Oklahoma under the Hard Rock Casino name.¹⁰⁶

Several tribes also have successfully partnered with hotel chains. The Marriott Residence Inn Capitol in Washington, D.C. is a franchise of Marriott International owned by the Four Fires Partnership, which consists of the San Manuel Band of Mission Indians and the Viejas Band of Kumeyaay Indians,

101. See Harrah's Ak-Chin Casino Resort, <http://www.harrahsakchin.com/casinos/harrahs-phoenix-ak-chin/hotel-casino/property-home.shtml> (last visited Feb. 3, 2009); Harrah's Rincon Casino & Resort, <http://www.harrahsrincon.com/casinos/harrahs-rincon-san-diego/hotel-casino/property-home.shtml> (last visited Feb. 3, 2009); Harrah's Cherokee Casino & Hotel, <http://www.harrahscherokee.com/casinos/harrahs-cherokee/hotel-casino/property-home.shtml> (last visited Feb. 3, 2009); see also Harrah's Casinos, <http://www.harrahs.com/index.shtml> (last visited Feb. 3, 2009).

102. See MGM Grand at Foxwoods, <http://www.mgmatfoxwoods.com/index.aspx> (last visited Feb. 3, 2009); *MGM Grand at Foxwoods Opens*, *NEWSDAY* (Long Island, NY) (May 18, 2008), <http://www.newsday.com/travel/ny-h5685809may18,0,5555215.story>.

103. See Station Casinos, <http://www.stationcasinos.com/corp/investor-relations/> (last visited Feb. 3, 2009).

104. See Hard Rock Café International: Corporate History, <http://www.hardrock.com/corporate/history/> (last visited Feb. 3, 2009).

105. See Hard Rock Café International: Corporate Ownership, <http://www.hardrock.com/corporate/ownership/> (last visited Feb. 3, 2009).

106. *CNE Signs Agreement with Hard Rock*, *CHEROKEE PHOENIX* (Okla.) (Nov. 14, 2008), <http://www.cherokeephoenix.org/3165/Article.aspx> (last visited Feb. 3, 2009). The licensing agreement would be with Hard Rock Holdings, LLC and HRHH IP, LLC, which are distinct entities from Hard Rock International, which is now owned by the Seminole Tribe of Florida. See *id.*

both of southern California, and the Forest County Potawatomi Community and the Oneida Tribe of Indians, both in Wisconsin. Three of the Four Fires tribes also opened a second franchise, a \$53 million, 239-suite Marriott Residence Inn in Sacramento, California.¹⁰⁷ In Arizona, the Gila River Indian Community owns the Sheraton Wild Horse Pass Resort and Spa and the Fort McDowell Yavapai Nation owns the Radisson Fort McDowell Resort and Casino.¹⁰⁸ In Green Bay, Wisconsin, the Oneida Tribe of Wisconsin owns the Radisson Hotel and Conference Center.¹⁰⁹ And in New Mexico, the Santa Ana Pueblo owns the Hyatt Regency Tamaya Resort & Spa.¹¹⁰

3. Private Entrepreneurship on Reservations

Tribes also are diversifying their economies by introducing and growing private-sector businesses on reservations.¹¹¹ Increasingly, tribes are providing seed money, start-up funds, and technical assistance to small business entrepreneurs. In South Dakota, the Lakota Fund program (now known as Oweesta) was the first micro-enterprise peer-lending fund established on a reservation. The program has grown into a national service provider for Native community development financial institutions, including business revolving loan funds, credit unions, banks, venture capital institutions, and housing loan funds.¹¹² On the Navajo Nation's reservation, the tribal government has worked to streamline the process for obtaining business-site leases on the reservation in an effort to attract more private enterprise to reservation communities.¹¹³

B. THE FUTURE OUTLOOK FOR INDIAN GAMING

In light of its historical development and performance, where does Indian gaming go from here? Despite the slower growth of Indian gaming in recent years, there is a fairly optimistic outlook for Indian gaming's continued success.

107. See Jim Adams, *Unique Partnership Celebrates Hotel Opening*, INDIAN COUNTRY TODAY, Mar. 16, 2005, at C1-C2, available at http://www.hotel-online.com/News/PR2005_1st/Mar05_FourFires.html.

108. See Joseph Siano, *Tribal Lands Sprout Big Hotels*, N.Y. TIMES, June 30, 2002, available at <http://query.nytimes.com/gst/fullpage.html?sec=travel&res=9B03E5DE1F3FF933A05755C0A9649C8B63>.

109. See *id.*

110. *Id.*

111. See Lorie M. Graham, *An Interdisciplinary Approach to American Indian Economic Development*, 80 N.D. L. REV. 597 (2004) (describing numerous factors influencing tribal economic development); Robert J. Miller, *Economic Development in Indian Country: Will Capitalism or Socialism Succeed?*, 80 OR. L. REV. 757 (2001) (calling for greater attention to private enterprise development on reservations).

112. See Oweesta, <http://www.oweesta.org/> (last visited Feb. 3, 2009); Graham, *supra* note 107, at 618 (describing the Lakota Fund program as "in 'congruence with Lakota cultural norms . . . allowing members to build and use wealth on their own terms'"); see also R.H. Tipton III, Note, *Microenterprise Through Microfinance and Microlending: The Missing Piece in the Overall Tribal Economic Development Puzzle*, 29 AM. IND. L. REV. 173 (2004) (proposing a tribal microfinance program to assist small business entrepreneurs who are ineligible for traditional funding).

113. See *Capitalism's Last Frontier*, THE ECONOMIST, Apr. 3, 2008, available at http://www.economist.com/business/displaystory.cfm?story_id=10966109.

But there are also uncertainties, and much depends on how far into the future one wishes to look.

In the short term, through 2009 and perhaps beyond, there is a high degree of uncertainty due to the state of the general U.S. economy. Until the economy turns around, it is likely that on a nationwide basis Indian gaming will continue to see slower growth than it has experienced historically. Throughout 2008, amidst the downturn in the economy, many Indian gaming facilities reported revenue declines and layoffs. For example, in September 2008, Foxwoods Resort Casino, one of the largest revenue-generating Indian casinos in the United States, laid off approximately 700 workers.¹¹⁴

In the mid term, after the economy turns around, Indian gaming should experience strong growth again. There are a few likely sources for the mid-term growth: expansions of gaming in undersupplied states, where tribes were previously restricted in terms of supply but are now able to expand (e.g., California, Washington, and Arizona); conversion from Class II machines to more lucrative Class III machines (e.g., continuing in Oklahoma and possibly in Florida, where the Seminole Tribe's gaming compact is being challenged); continued growth in Class II markets if recently enacted or proposed gaming regulations do not significantly reduce the performance of Class II gaming machines; continued growth in smaller, less mature Indian gaming markets that have limited competition and unmet demand; and the abundance of new gaming developments planned across the country (e.g., proposed and planned gaming facilities and facility expansions).

In the long term, many gaming tribes face favorable market conditions. However, there is still great uncertainty for Indian gaming. This is especially true in light of existing legal challenges and proposed legislation and regulations aimed at restricting Indian gaming and limiting its expansion. The fact is that any number of these policy shifts could critically impact Indian gaming. In South Dakota, for example, Indian gaming at the twelve tribal gaming facilities generated just over \$97 million in 2007, down from over \$100 million in 2006.¹¹⁵ The Indian gaming market in South Dakota is artificially constrained by compact limits on the number of slot machines the tribes may operate.¹¹⁶ The Flandreau Santee Sioux Tribe recently filed a federal claim accusing Governor Mike Rounds of failing to negotiate in good faith, and the outcome of

114. Jim Finkle, *Big U.S. Casino Foxwoods to Cut 700 Jobs*, REUTERS, Sept. 30, 2008, available at <http://www.reuters.com/article/CASINO/idUSN3047031320080930>.

115. MEISTER, *supra* note 3, at 38.

116. *Id.* The tribal-state compacts are available through the South Dakota Office of Tribal Government Relations, <http://www.state.sd.us/oia/agreements.asp> (last visited Feb. 3, 2009). By way of comparison, the Sisseton-Wahpeton Oyate's reservation straddles the border between North Dakota and South Dakota, and operates casinos in both states. In South Dakota, where slots are limited by the tribal-state compact, the tribe's Dakota Sioux Casino offers 200 Class III machines and 145 Class II machines. *See* Dakota Sioux Casino, <http://www.dakotasioux.com/slots.htm> (last visited Feb. 3, 2009). In North Dakota, where the tribal-state compact places no limit on the number of slot machines, the tribe's Dakota Magic Casino offers over 900 machines. *See* Dakota Magic Casino & Hotel, <http://www.dakotamagic.com/slots.htm> (last visited Feb. 3, 2009).

the case may impact the growth of Indian gaming in South Dakota.¹¹⁷

Even if non-market factors (i.e., legal challenges, legislation, and regulations) do not slow down the growth of the Indian gaming industry, there are market limitations that may contribute to slower growth. There is potential competition, both within and outside of Indian gaming, and markets can naturally slow as they mature and if they become saturated.

C. TRIBAL ECONOMIC DIVERSIFICATION¹¹⁸

As a result of the short-, mid-, and long-term uncertainties surrounding the future of Indian gaming, it is wise for tribes to consider expanding beyond gaming into non-gaming business ventures. In so doing, tribes develop sources of revenue other than gaming, thus diversifying their economic base, minimizing risk, and providing greater long-term economic stability.

However, not all non-gaming business ventures are alike. They differ in many respects and may be grouped into four levels of diversification: non-gaming amenities within or adjacent to gaming facilities, tourist-reliant non-gaming businesses, on-reservation businesses that export products off the reservation, and off-reservation businesses.

1. *Non-Gaming Amenities Within/Adjacent to Gaming Facilities*

The most commonly used form of diversification by gaming tribes is the operation of non-gaming amenities within or adjacent to gaming facilities. These non-gaming businesses have typically included hotels, restaurants, spas, retail outlets, entertainment, and meeting and convention space. While these non-gaming businesses can have a positive effect on the core gaming business by providing a deeper and wider range of offerings for patrons and by increasing the perceived quality and attractiveness of a facility, they are considered to be the lowest level of diversification because the non-gaming businesses are still largely dependent on the success of gaming.

2. *Tourist-Reliant Non-Gaming Businesses*

The second level of diversification is tourist-reliant non-gaming businesses outside of casinos. These businesses rely on customers drawn onto the reservation, and have included restaurants, golf courses, retail/outlet malls, ski resorts, RV parks, water parks, gas stations, grocery stores, travel centers, and museums/cultural centers. While less dependent on gaming than the first level of diversification, this level may still be largely reliant on gaming patrons.

117. See Amelia Quiroga, *Indian Gambling—South Dakota Indian Gambling Revenue Down*, *US Up*, ASSOCIATED PRESS, Sept. 2008, available at http://indiancountrynews.net/index.php?option=com_content&task=view&id=4461&Itemid=33.

118. Alan Meister, Continuing Legal Education course at Fredericks, Peebles & Morgan: Indian Gaming & Beyond: Yesterday, Today, & Tomorrow (Jan. 22, 2009) (on file with author).

3. *On-Reservation Businesses that Export Products Off the Reservation*

The third level of diversification is on-reservation businesses that export products off the reservation. These businesses are completely independent of gaming. The types of businesses have typically been quite diverse in nature and often dependent on geographic location, available natural resources, and core competencies of tribes. Such ventures have included natural resources, such as agriculture, fisheries, forestry, ranching, mining, and energy production, as well as water bottling, construction, manufacturing, apparel, and financial services such as banking and mutual fund management. Others have included industrial parks and business parks, information technology services, transportation logistics, commercial printing, various types of media outlets, sports promotions, and even a professional sports team.

4. *Off-Reservation Businesses*

The highest and least frequently used level of diversification is off-reservation businesses. These types of businesses are not as common, as they may forfeit some of the valuable benefits, such as comparative advantage in taxation or sovereign immunity, that tribal enterprises enjoy when located on reservation lands. As such, they may be higher-risk business ventures. However, they do not restrict tribes to their reservations or limit the types of opportunities available. Recent examples of off-reservation businesses have included hotels and restaurants. The largest example of a tribal off-reservation business is the Seminole Tribe of Florida's acquisition of the Hard Rock brand, mentioned above. The tribe not only acquired the Hard Rock Hotels that were part of two of their casinos, but also more than sixty other properties comprising Hard Rock Cafes, Hard Rock Live Concert Venues, other Hard Rock Hotels, and the world's largest and most valuable music memorabilia collection.

Lastly, some tribes have explored commercial gaming and the development and management of gaming facilities for other tribes. While not unrelated to gaming, these opportunities offer geographic diversification of gaming. Attempts at this type of diversification have come from the experienced and highly successful Connecticut gaming tribes, the Mashantucket Pequot Tribal Nation and the Mohegan Tribe, which have sought gaming opportunities in commercial gaming markets (e.g., Pennsylvania and New York) and in other states (e.g., casino development and management for tribes in California, Washington, and Wisconsin).¹¹⁹

VII. CONCLUSION

When Congress enacted IGRA, it codified tribes' sovereign right to conduct

119. See, e.g., *Mashantucket Pequot Slots Parlor Plan Opposed*, HARTFORD COURANT, Nov. 14, 2008, available at <http://www.courant.com/business/hc-bizdigbrf1114.art3nov14%2C0%2C5829400.story>; Erica Jacobson, *Foxwoods to Help Revive Casino in Bahamas*, METROWEST DAILY NEWS (Mass.), Feb. 25, 2008, available at <http://www.metrowestdailynews.com/state/x774167759>.

gaming on Indian lands, a right that the U.S. Supreme Court recognized in *Cabazon v. California Band of Mission Indians*. Congress recognized what American Indian people already knew—that most reservation economies were, to put it mildly, challenged in terms of resources and opportunities—and what some tribes had already realized: that gaming operations could change that equation. One of IGRA's key policy goals, therefore, was the promotion of tribal economic development.

Twenty years later, Indian gaming has made significant headway toward achieving this goal. The legal, political, and regulatory underpinnings of tribal gaming created the foundation for the industry's massive economic success. Tribal gaming is a \$26.5 billion industry that generates additional tens of billions of dollars in tax and other revenue and hundreds of thousands of jobs both on and off the reservation. However, Indian gaming's economic impacts are about more than just quantifiable dollars or jobs—they are transformative, whether one is in South Dakota at one end of the spectrum, or Connecticut at the other.

The Indian gaming industry continues to leverage an unprecedented diversification of reservation economies across the United States. At an ever-increasing pace, American Indian people are creating more fully developed and diversified economies that can capture otherwise externalized dollars and generate well-paying jobs on the reservation. As the industry matures, it presents new opportunities for economic diversification through tribal-corporate partnerships, venture capital and seed-money programs, and private enterprise development on reservations. Tribal governments are constructing and enhancing institutions that can further the maturation of tribal legal, regulatory, and financing capacity.

At a time when it appears that the gaming industry is impervious neither to a larger economic downturn nor to legal, political, and regulatory curtailment, the challenges to tribal gaming are substantial. Not all of those challenges are wholly external to reservations and reservation life. Most require tribal governments and American Indian people to take responsibility for their own destinies and determine what the future will hold. For many tribes, gaming may be a means to an end rather than an end in itself. In the long run, developing *beyond* gaming might well be the ultimate, and most desirable, outcome.

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