



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 06 2013

Honorable Janice Prairie Chief-Boswell
Governor, Cheyenne and Arapaho Tribes
P.O. Box 38
Concho, Oklahoma 73022

Dear Governor Prairie Chief-Boswell:

On September 23, 2013, the Department of the Interior (Department) received the proposed Class III First Amended Settlement Agreement (Agreement) between the Cheyenne and Arapaho Tribes (Tribes) and the State of Oklahoma (State), providing for the conduct of Class III gaming activities by the Tribes.

The Tribes currently operate Class III gaming under the terms of the model tribal-state gaming compact enacted by Oklahoma's legislature in 2004. Last year, the State challenged the Tribes' operating an Internet gaming site, *www.pokertribes.com*. The Tribes and the State entered into a dispute resolution process in an attempt to resolve their differences. Their efforts resulted in execution of the Agreement that is before us today, which entirely replaces the previous Settlement Agreement that we disapproved on August 1, 2013. *See* Letter to Ms. Janice Prairie Chief-Boswell, Governor, Cheyenne-Arapaho Tribes from Kevin Washburn, Assistant Secretary – Indian Affairs. For the following reasons, we must disapprove this Agreement.

Under the Indian Gaming Regulatory Act (IGRA), the Secretary may approve or disapprove a proposed compact within 45 days of its submission. 25 U.S.C. § 2710 (d)(8). We have completed our review of the Agreement, along with the additional material submitted by the Tribes and the State.

The Department's regulations at 25 C.F.R. § 293.4 (b) provide that "[a]ll amendments, regardless of whether they are substantive amendments or technical amendments, are subject to review and approval by the Secretary." We, thus, review the proposed amendments to determine whether they violate IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. 25 U.S.C. § 2710(d)(8)(B)(i-iii).

The Agreement modifies the existing Compact by expanding the scope of games the Tribe is currently operating to include internet gaming as part of the Compact's covered games.¹ The

¹ Section 3 of the Compact defines a "covered game" which, in general, authorizes electronic bonanza-style bingo games, electronic amusement games, electronic instant bingo, non-house-banked card games, and other games that would require a compact and if the game has been approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, approved by state legislation for use by any person or entity, or approved by amendment of the State-Tribal Gaming Act as agreed by written supplement to the Compact.

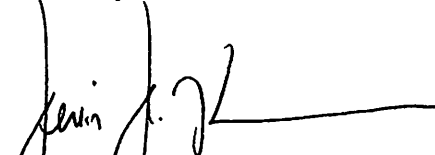
Agreement allows internet gaming if the individual player is located or resides outside the boundaries of the United States and its territories during the entirety of a gaming transaction. The Agreement then extends the existing revenue sharing provisions to the State based on the expanded scope of gaming.

The Department is committed to adhering to IGRA's statutory restrictions on tribal-state gaming compacts. IGRA prohibits the imposition of a tax, fee, charge, or other assessment on Indian gaming except to defray the state's costs of regulating Class III gaming activities. 25 U.S.C. § 2710 (d)(4). To determine whether a state may collect revenues from Indian gaming, we ordinarily consider whether the state has offered "meaningful concessions" to the tribe. For purposes of this decision, we assume, without deciding, that the Tribes may operate internet gaming, and may include that gaming in the scope of a Compact, to the extent that internet gaming may be permitted under IGRA. Here, the proposed expansion of the Compact's definition of covered games to include internet gaming by persons located outside of United States and its territories introduces an inappropriate basis for revenue sharing in a Compact. The State cannot control, nor can it offer, exclusive access to a market of patrons located entirely outside the United States and its territories. As a result, the State's concession is illusory. Therefore, the revenue sharing requirement for the proposed internet gaming activities amounts to an impermissible tax in violation of IGRA. *See* 25 U.S.C. § 2710 (d)(4). Based upon this determination, the Agreement is disapproved.

We appreciate the efforts of the Tribes and the State to work together to attempt to reach an agreement on important matters affecting their relationship. However, the Department is committed to upholding IGRA, and we cannot approve a compact that violates IGRA in the manner described above.

A similar letter has been sent to the Honorable Mary Fallin, Governor of the State of Oklahoma.

Sincerely,



Kevin K Washburn
Assistant Secretary-Indian Affairs

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Cheyenne & Arapaho
EXECUTIVE OFFICE
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OKLAHOMA SECRETARY
OF STATE



FIRST AMENDED SETTLEMENT AGREEMENT
BETWEEN THE STATE OF OKLAHOMA
AND THE CHEYENNE-ARAPAHO TRIBES

This First Amended Settlement Agreement ("Agreement") is entered into by and between the State of Oklahoma ("State") and the Cheyenne-Arapaho Tribes of Oklahoma (collectively "Tribes") (all of which are hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. The Parties have previously entered into a *State Tribal Gaming Compact*, published in the Federal Register, Vol. 70, No. 67, Friday, April 8, 2005, and filed with the Oklahoma Secretary of State on March 30, 2006.

B. The Tribes previously were operating an online website www.pokertribes.com. The State contended that as operated, this website, and other similar electronic practices, materially violated the State Tribal Gaming Compact.

C. Part 12 - Dispute Resolution of the State Tribal Gaming Compact states that it is the goal of the parties to "resolve all disputes amicably and voluntarily." Therefore, due to the high regard with which each sovereign holds the other, to avoid the delay, uncertainty, inconvenience, and expense of protracted arbitration and litigation of the above dispute, and in consideration of the mutual promises and obligations of this Agreement, the Parties entered into a Settlement Agreement on April 5, 2013 designed to address the dispute. See Exhibit A.

D. On August 1, 2013, The Department of the Interior rejected the Settlement Agreement based in part on the gaming revenues due the State exceeding those rates reflected in the Compact.

E. Therefore it is the intent of the Parties to amend the Settlement Agreement previously executed to read entirely as follows and the Parties hereby agree and covenant as follows:

STIPULATIONS

1. IT IS HEREBY STIPULATED BY THE PARTIES, that all forms of internet and/or electronic gaming by individual players, who are not physically present at all times in a facility located entirely on Indian lands as defined by IGRA, is covered conduct under the State Tribal Gaming Compact, but is not permissible and is prohibited if the individual player(s) are located or reside within the boundary of the United States and its territories during any portion of a gaming transaction.

2. IT IS HEREBY STIPULATED BY THE PARTIES, that all forms of internet and/or electronic gaming by individual players, who are not physically present at all times in a facility located entirely on Indian lands as defined by IGRA, is covered conduct under the State Tribal Gaming Compact, and is permissible if the individual player is located or resides outside the boundary of the United States and its territories during the entirety of a gaming transaction.

3. IT IS HEREBY STIPULATED BY THE PARTIES, that these stipulations constitute the understanding of each of the Parties to the *State Tribal Gaming Compact* as to the intent and interpretation of existing Compact terms and shall be considered only statements of intent and/or clarification, not modifications of Compact terms. Further, these stipulations and this Settlement Agreement in no way expands or modifies Compact standards or provisions already in existence.

TERMS AND CONDITIONS

4. The Tribes agree all payments shall be made in accordance with *State Tribal Gaming Compact* provisions and all depository financial transactions related hereto shall be done in a financial institution located within the boundaries of the Tribes jurisdictional areas.

5. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and negotiation of this Agreement.

6. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

7. This Agreement is governed by the choice of law provisions contained within the State Tribal Gaming Compact.

8. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by both Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

9. This Agreement constitutes the complete agreement between the Parties with respect to the issues addressed herein. This Agreement may not be amended except by signed written consent of the Parties.

10. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated herein.

11. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

12. This Agreement is binding on the Parties successors, transferees, heirs, and assigns.

13. Notwithstanding any other provision herein, the Parties agree that should any other entity or federally recognized tribe located within the State of Oklahoma be allowed, through agreement or otherwise, to operate on terms of revenue and/or scope (including but not limited to geographical location of individual player(s)) different than those contemplated herein, such more favorable terms shall, at the option of the Tribes, automatically be incorporated herein.

14. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

15. This Agreement will terminate in conjunction with the *State-Tribe Gaming Compact* between the State of Oklahoma and the Cheyenne and Arapaho Tribes, which was published in the Federal Register, Vol. 70, No. 67, Friday, April 8, 2005, and filed with the Oklahoma Secretary of State on March 30, 2006, or unilaterally upon 90 days notice to the other Party whichever comes first.

Each of the undersigned represents that they are duly authorized, and has the authority, to execute this agreement on behalf of the designated party.

STATE OF OKLAHOMA

Mary Fallin 9/12/2013
MARY FALLIN, GOVERNOR DATE

Attest:

Chris Menis
Secretary of State
Assistant

CHEYENNE-ARAPAHO TRIBES

Janice Prairie Chief-Boswell 9-11-13
JANICE PRARIE CHIEF-BOSWELL, GOVERNOR DATE