



How an Ambiguity in the 2006 Compact Language Could Affect Payments to the State

Prepared by
 The Blue Sky Consulting Group
 December 2007

Ambiguity in the language of the 2006 compacts could result in significantly lower payments to the state General Fund than the tribes have claimed. The payments to the state under the compacts are calculated as a percentage of the total “net win” from the new slot machines. The compacts require the tribes to calculate the average net win per slot machine and multiply the result by the average number of new slot machines “in operation” during that quarter to determine the total net win from the new machines. Under the terms of the compacts, the tribes agreed to pay the state an amount equal to 15 to 25% of the net win, depending on the number of machines added.

The language of the 2006 compacts, however, states that the tribes are to multiply the average number of slot machines “in operation” (rather than the average number of machines “present” on the casino floor) times the average win per machine (calculated using the present on the floor metric). Slot machines that are roped off during the weekdays, for example, might not be considered to be “in operation.” The result is a much *smaller* calculated net win number used for purposes of determining the payment to the state.

By taking advantage of this loophole in the compact language, the tribes could significantly reduce the amount of revenue paid to the state General Fund. As shown in the table below, the tribes could reduce their overall payments to the state by as much as 60 percent.

Impact of Machines “in Operation” Versus “on the Floor” on State Revenues

Periods When Devices are "in operation"	Every Day	Thursday - Sunday	Friday - Sunday	Friday and Saturday Nights Only
Time New Devices Are in Operation	100%	57%	43%	11%
Reduction in Net Win Payments to State	0%	-43%	-57%	-89%
Reduction in Total Payments to the State	0%	-29%	-38%	-60%

The following is an illustrative example of how the net win calculation could work:

State Fee Calculation Example

Current Machines	2,000
New Machines Added	3,000
Total Machines "On the Floor"	5,000
Total Annual Net Win	\$ 912,500,000
Net Win Per Device Per Day	\$ 500

State Fee Calculation w/ Machines "In Operation" Every Day

Fee Percentage	15%	A
Average Net Win Per Machine (On the Floor)	\$ 500	B
New Machines In Operation	3,000	C
State Fee (A * B * C * 365)	\$ 82,125,000	

State Fee Calculation w/ Machines "In Operation" Friday - Sunday only

Fee Percentage	15%	A
Average Net Win Per Machine (On the Floor)	\$ 500	B
New Machines In Operation (Friday - Sunday)	1,290	C
State Fee (A * B * C * 365)	\$ 35,313,750	

Difference -57%

ABOUT THE AUTHORS

TIM GAGE

Tim Gage is a highly-regarded public servant, having spent over 24 years as a fiscal advisor with both houses of the California Legislature and as the Director of the California Department of Finance.

Mr. Gage was appointed Director of Finance in 1999 after over 20 years of legislative budget experience. In this capacity, he directed a staff of 350 in the development of the state's \$100 billion budget, and oversaw its progress through the legislative process. He also directed representation of the Administration on 70 state boards and commissions and negotiated several major legal settlements.

In the Legislature, Mr. Gage served for four years as the chief fiscal advisor to two Presidents pro Tempore of the California State Senate, where he coordinated development of budget and fiscal issues for the Senate. Mr. Gage also organized a major welfare-to-work conference involving business leaders, academics, non-profit organizations, and activists. Prior to moving back to the Senate, Mr. Gage served for seven years as the chief consultant to the Assembly Ways and Means Committee, where he oversaw preparation of the state budget for the Assembly and the analysis of all financial legislation heard by the committee.

Before moving to the Assembly, Mr. Gage spent six years as the assistant fiscal advisor to the President pro Tempore of the Senate and three years as a Program Analyst in the Office of the Legislative Analyst. During his tenure in state service, Mr. Gage has specialized in state-local fiscal relations and tax policy.

Since resigning as Director of Finance in January 2003, Mr. Gage has consulted for various clients. He subcontracted with Montague DeRose and Associates, co-Financial Advisor to the State Treasurer on the state's recent sale of Economic Recovery Bonds. Other clients include LA Tomorrow, the Foundation for American Communications, the California Association of Nonprofits and the Service Employees International Union.

In March 2003, Mr. Gage was appointed by Governor Davis to a three-year term as a member of the Board of Governors of the California Independent System Operator, the state's public benefit corporation responsible for managing the flow of electricity on California's high-voltage electric power grid. Governor Schwarzenegger reappointed Mr. Gage to the board in February 2007.

Mr. Gage received a Bachelor of Arts degree in Philosophy with honors from Harvard College and a Master of Public Policy degree from the Goldman School of Public Policy at the University of California at Berkeley.

MATTHEW NEWMAN

Matthew Newman is a joint founder of the Blue Sky Consulting Group. Mr. Newman specializes in analysis of both state and local fiscal policy issues. He has expertise in developing simulation and forecasting models, including work for the California Legislature, where he developed the first modern property tax forecasting model used by the state's Legislative Analyst's Office. He also conceptualized, designed and implemented the CSUS Forecast of the Sacramento Region, the first econometric forecasting model for the Sacramento Region.

Mr. Newman was the founding Executive Director of the California Institute for County Government (CICG), a nonpartisan public policy research organization supported by the California State Association of Counties (CSAC), the California State University system, and the California State University, Sacramento (CSUS). While at CICG, Mr. Newman specialized in analyzing complex public policy issues and presenting the results to policy makers in a clear, concise, and readily accessible format. He conducted empirical research projects in a broad range of areas relevant to local government in California and maintained an extensive database of local government financial, economic, and demographic statistics.

Mr. Newman had oversight responsibility for all CICG research projects and directed the institute's strategic planning and fundraising activities. Mr. Newman was responsible for the publication of four dozen research reports, articles, and publications while at CICG. He developed the institute's Digital Clipping Service, a news clipping service used by more than 3,000 top level state and local officials each day.

Prior to working at CICG, Mr. Newman worked as a Senior Consultant for LECG, an international economics and public policy consulting firm. While at LECG, Mr. Newman analyzed complex public finance issues, including an assessment of the causes of the Orange County bankruptcy and a statistical analysis of the Bank of America's California paying agent activities. Mr. Newman's work on the BofA case was instrumental in recovering nearly \$200 million for California state and local governments.

Mr. Newman also served as a Policy Analyst for California's Legislative Analyst's Office, where he published studies of California's property tax, county fiscal constraints, and the earned income tax credit. Mr. Newman also analyzed the allocation of local funding streams, including the formula used to allocate the Proposition 172 Public Safety Sales Tax revenues and the AB 8 property tax allocation formula.

Mr. Newman is a Phi Beta Kappa, magna cum laude graduate of the College Honors program at the University of California at Los Angeles and holds a Master of Public Policy degree from Harvard University's Kennedy School of Government.

TRISHA MCMAHON

Trisha McMahon joined the Blue Sky Consulting Group in 2006, after receiving her masters degree from UC Berkeley's Goldman School of Public Policy. Her studies focused on the interplay between policy and communications, as well as skill-building in research and survey design. While at the Goldman School, she conducted analysis on spectrum policy for Free Press and the Consumer Federation of America, provided options for grassroots-think tank collaboration to the Rockridge Institute, and delivered an embryonic stem cell policy brief to Congress on behalf of 2020 Democrats. While at Berkeley, Trisha was the Managing Editor of the school's policy journal, Policy Matters.

Prior to graduate school, Trisha toiled in the heat of Atlanta as a Research Analyst with the Democratic Party of Georgia, providing opposition research for state legislative candidates. Trisha graduated with Honors from the University of Arizona with a degree in International Studies, and spent time studying in Russia, England, Boston, and Washington, DC.