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👉 Details: Legislative Audit Bureau Report 05-11: An Audit: Division of Gaming, Department of Administration

(FORM UPDATED: 08/11/2010)

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* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)



STATE OF WISCONSIN

Legislative Audit Bureau

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Janice Mueller
State Auditor

DATE: June 21, 2005

TO: Karen Asbjornson and Pamela Matthews
Committee Clerks to the Joint Legislative Audit Committee

FROM: Julie Gordon *Julie Gordon*
Audit Director

SUBJECT: Report 05-11: An Audit of Division of Gaming, Department of Administration

As required by s. 13.94(1)(eg), Wis. Stats., we have completed our examination of the Division of Gaming within the Department of Administration. We have issued an unqualified opinion on the Division's budgetary financial schedules for the three programs it administers—Indian Gaming, Racing, and Charitable Gaming—for fiscal year (FY) 2001-02 through FY 2003-04.

Based on financial statements audited by private accounting firms and provided to the Audit Bureau, total tribal revenue of the 11 Wisconsin tribes increased from \$889.5 million in 2000 to nearly \$1.2 billion in 2004. Although the experiences of individual tribe's may vary, aggregate gaming profits increased 23.3 percent, from \$418.7 million in 2000 to \$516.3 million in 2004.

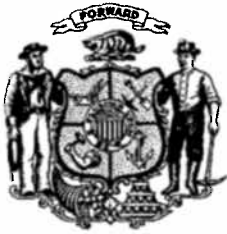
The Division's financial activity has changed from prior years as a result of gaming compact amendments that were negotiated with 10 of the 11 tribes in 2003. In these amendments, the tribes agreed to make additional payments to the State. The State collected \$24.9 million from the tribes in FY 2002-03 and \$69.6 million in FY 2003-04. However, we identify several provisions in the 2003 amendments that will make it difficult for the Division to ensure payments to the State are accurate and received in a timely manner. The compacts are currently being renegotiated. Further changes or clarifications to compact provisions could resolve these issues.

Pari-mutuel and bingo activities have declined. Pari-mutuel tax revenue declined from \$1.3 million in FY 2001-02 to \$1.1 million in FY 2003-04, while bingo tax revenue declined over the same period from nearly \$384,800 to \$361,600. Proceeds from both activities lapse to the Lottery Fund for distribution. During the three-year period we examined, nearly \$4.0 million was provided to the Lottery Fund.

The audit will be released on Wednesday, June 22, at 9 a.m. Please contact us if you have any questions regarding the report.

JG/bm

Enclosures

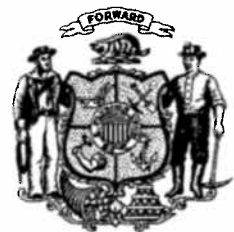


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An Audit

Division of Gaming

Department of Administration

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The Bureau is a nonpartisan legislative service agency responsible for conducting financial and program evaluation audits of state agencies. The Bureau's purpose is to provide assurance to the Legislature that financial transactions and management decisions are made effectively, efficiently, and in compliance with state law and that state agencies carry out the policies of the Legislature and the Governor. Audit Bureau reports typically contain reviews of financial transactions, analyses of agency performance or public policy issues, conclusions regarding the causes of problems found, and recommendations for improvement.

Reports are submitted to the Joint Legislative Audit Committee and made available to other committees of the Legislature and to the public. The Audit Committee may arrange public hearings on the issues identified in a report and may introduce legislation in response to the audit recommendations. However, the findings, conclusions, and recommendations in the report are those of the Legislative Audit Bureau. For more information, write the Bureau at 22 E. Mifflin Street, Suite 500, Madison, WI 53703, call (608) 266-2818, or send e-mail to leg.audit.info@legis.state.wi.us. Electronic copies of current reports are available on line at www.legis.state.wi.us/lab.

State Auditor - Janice Mueller

Audit Prepared by

Julie Gordon, Director and Contact Person
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Janice Mueller
State Auditor

June 22, 2005

Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Roessler and Representative Jeskewitz:

We have examined the Indian Gaming, Racing, and Charitable Gaming programs administered by the Division of Gaming in the Department of Administration, as required by s. 13.94(1)(eg), Wis. Stats. We have issued an unqualified opinion on the Division's budgetary financial schedules for the three-year period from fiscal year (FY) 2001-02 through FY 2003-04.

Under the terms of the tribal-state gaming compacts, this office and the Department of Administration receive copies of independent financial audits of all Class III gaming operations for the 11 tribes that operate gaming facilities in Wisconsin. Based on these audited statements, total tribal revenue increased from \$889.5 million in 2000 to almost \$1.2 billion in 2004, or by 34.1 percent. Tribal expenditures increased from \$470.8 million in 2000 to \$676.2 million in 2004, or by 43.6 percent. Gaming profits, which are used by the tribes for payments to tribal members or for other purposes, increased from \$418.7 million to \$516.3 million, or by 23.3 percent.

Payments to the State increased under the 2003 compact amendments that were signed by 10 of the 11 tribes. The State received tribal payments of nearly \$24.9 million in FY 2002-03 and \$69.6 million in FY 2003-04. However, projecting future tribal payments is difficult pending the outcome of negotiations in response to a 2004 Wisconsin Supreme Court decision that invalidated certain compact provisions. In addition, because future payments to the State will be based on a percentage of net revenues, rather than on the lump-sum amounts most tribes paid in the past, it will be important for the Department of Administration to ensure that payments are correctly calculated and received in a timely manner. We note a number of potential concerns in these areas.

From FY 2001-02 through FY 2003-04, pari-mutuel tax revenue generated from greyhound racing and bingo tax revenue has declined. Nevertheless, during the three-year period we examined, the Racing and Charitable Gaming programs provided nearly \$4.0 million to the Lottery Fund for property tax relief.

We appreciate the courtesy and cooperation extended to us by the Department of Administration and the 11 tribal nations located in Wisconsin. A response from the Department of Administration follows the appendix.

Respectfully submitted,

Janice Mueller
State Auditor

JM/JG/ss





WISCONSIN STATE LEGISLATURE

Joint Legislative Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

June 23, 2005

Mr. Marc Marotta, Secretary
Department of Administration
101 East Wilson Street, 10th Floor
Madison, Wisconsin 53703

Dear Mr. Marotta:

The nonpartisan Legislative Audit Bureau's recent financial audit of the Division of Gaming (report 05-11) raised serious concerns about the timeliness and accuracy of future payments to the State under the terms of the gaming compacts negotiated with tribal governments. As you know, the compact amendments base payments to the State on a percentage of net gaming revenue. However, as the Legislative Audit Bureau notes:

- Compact amendments with five tribes do not provide any time period to which the percentage of net revenue should be applied. While some may assume the percentage would be applied to the last completed fiscal year, the compacts do not delineate this.
- Compact amendments with two tribes allow nine months for the tribes to submit their payments to the State. Since audited financial statements are required within four months, the justification for this delay in payments is unclear.
- Compact amendments with two tribes indicate that a percentage of net revenue should be paid to the State annually for a specified time period. However, neither tribe's fiscal year correlates with the identified time period. As a result, audited financial statements to verify net revenue amounts for these tribes will likely not be available.

In her response to the audit, Acting Division Administrator Gina Frank-Reece stated that, "...the suggestions contained in the audit regarding compact payment language will likely be implemented in the current negotiations." It is our expectation, therefore, that the Department of Administration will be diligent throughout the negotiations in clarifying each compact's payment language to ensure the timeliness and accuracy of future payments to the State.

Thank you for your attention to these concerns.

Sincerely,

Senator Carol A. Roessler, Co-chair
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

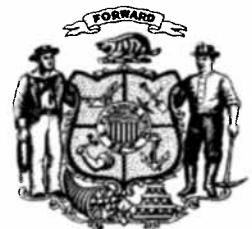
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WISCONSIN STATE LEGISLATURE



Original URL: <http://www.jsonline.com/news/state/jun05/335634.asp>

Tribal gaming's profit margin at 43%, audit finds

Industry revenue rises to \$1.2 billion a year

By STEVE SCHULTZE
sschultze@journalsentinel.com

Posted: June 22, 2005

Tribal gambling has grown to a \$1.2 billion-a-year business in Wisconsin, with revenue increasing 34% from 2000, a state audit report released Wednesday says.

The report by the Legislative Audit Bureau also shows the tribal casinos are very profitable, earning \$516 million in 2004 after deducting expenditures - a profit margin of 43%.

The \$1.2 billion figure for all tribal gambling-related revenue includes \$79 million in revenue from hotels, restaurants and other operations linked to the casinos.

A rough comparison: the \$1.2 billion Indian gambling industry in Wisconsin is dwarfed by the state's \$42.8 billion manufacturing sector, the \$5.5 billion publishing and broadcasting industry, and the \$14.9 billion health care sector, according to U.S. Commerce Department figures for 2002, the most recent available.

Tribal gambling takes in about the same as Wisconsin's computer systems design sector (\$1.2 billion) and the state's wood products industry (\$1.4 billion).

The audit lists only aggregate totals for the state's 11 tribes that operate 17 casinos and seven ancillary facilities - generally convenience stores with a small number of slot machines. Figures for individual tribes' casino operations were withheld because of secrecy deals that were part of state-tribal compacts governing gambling.

Nonetheless, the revenue of the Forest County Potawatomi tribe's Milwaukee casino can be determined based on the local payments it makes to the city and county. For the fiscal year ending last August, Potawatomi Bingo Casino in the Menomonee Valley took in about \$260 million, making it the most lucrative casino in Wisconsin. The city and county each get 1.5% of net revenue from the tribe, which came to about \$3.9 million last year.

Payments by the tribes to the state totaled \$69.6 million for the state's 2003-'04 fiscal year. That was \$30 million less than anticipated because the Ho-Chunk Nation withheld that sum. The tribe based that action on a 2004 state Supreme Court decision that struck down new games and the perpetual duration of gambling compact amendments made in 2003.

Tribal casino payments to the state were far lower before the 2003 amendments - \$16.7 million was paid in 2003, according to the state Department of Administration.

Some lawmakers have argued that Gov. Jim Doyle should have negotiated much higher tribal payments, but Doyle has said Wisconsin enjoys one of the best casino payment deals in the country.

Wisconsin's casino "revenue sharing" payments for 2004 ranked fourth nationally of the 16

Casino Profits



Photo/Rick Wood

Patrons try their luck at the slot machines Wednesday at Potawatomi Bingo Casino. For the fiscal year ending last August, the casino in the Menomonee Valley took in about \$260 million, making it the most lucrative casino in Wisconsin. Tribal gambling as a whole has grown into a \$1.2 billion-a-year business in Wisconsin.



Photo/Rick Wood

Blackjack gaming tables (foreground) and slot machines (background) are crowded with patrons Wednesday at the Potawatomi Bingo Casino.

Gaming Profits

states with tribal gambling, behind Connecticut, California and Arizona, according to a national study released this month by Alan Meister, an economist with the Analysis Group, a Los Angeles-based financial consulting firm. Meister's review included tribal payments to both state and local government.

In addition, Wisconsin's gambling payments grew by the largest percentage of any state with tribal casinos, more than tripling from 2003 to 2004, the Meister study shows.

Connecticut tribal casinos rake in by far the largest sums of any state - \$2.2 billion last year - based on their proximity to New York City.

Large payment

Officials from the Potawatomi tribe say the \$40.5 million it paid to the state last year effectively made it the biggest business taxpayer in the state, a fact confirmed by state Department of Administration spokesman Scott Larrivee.

The payment amounted to about 16% of the tribe's revenue, minus payouts from its Milwaukee casino. The state's corporate income tax rate is 7.9% on net revenue, a smaller base in which business expenses are subtracted first.

The tribal gambling payments to states technically are not a tax, which is forbidden under federal law.

"The Potawatomi feel like they are paying their fair share," said tribal spokesman Ken Walsh. "They are paying multiple times what they would pay under the (state's) corporate tax rate."

Critics have said the tribes should pay something more like the 25% two Connecticut tribes pay on slot revenue. Most Wisconsin tribes in future years will pay about 6% to 8% of all gaming revenue; until then, the payments in most instances were negotiated flat sums.

Larrivee said state-to-state comparisons are difficult because of widely varying factors. For example, the high rate paid by the Connecticut tribes was for semi-monopoly rights to a massive market that draws from the New York City and Boston metropolitan areas.

Doyle's administration has been negotiating potential changes in the compacts to address the court ruling, which could lead to lower state payments.

The Ho-Chunk and the state will arbitrate the question of what that tribe should pay, and arbitration is possible with the Potawatomi tribe as well if a revised gambling deal can't be completed by the end of the month. The Potawatomi would pay the state \$43.5 million this year, under terms of its 2003 compact amendment.

The Legislative Audit Bureau cited concerns about the accuracy and timeliness of some tribes' reporting of gaming revenue but did not disclose which tribes had problems. Two tribes' compacts, for instance, allow nine months from the end of a fiscal year for submitting payments to the state, the report says.

Gambling agreements with five tribes don't specify the time period for which their state payments should be calculated, creating room for argument, the report says.

"The auditors have concerns with the accuracy and timeliness of payments to the state" in the future, state Auditor Jan Mueller said.

The suggestions for tightening compact language on time periods for casino payments will likely be adopted in the current round of compact negotiations, Gina Frank-Reece, the acting state Gaming Division administrator, said in a written response to the audit.

CASINO: TRIBAL GAMBLING A CASH COW
Indian tribes operating casinos in Wisconsin enjoyed a 43% profit margin on their businesses in 2004, a state audit found.

TRIBAL NET REVENUE
(\$ MILLIONS)

YEAR	PROFITS	EXPENDITURES	REVENUE
2000	\$418.7	\$233.3	\$652.0
2001	\$274.0	\$222.0	\$496.0
2002	\$370.0	\$227.0	\$597.0
2003	\$24.0	\$22.0	\$46.0
2004	\$116.3	\$53.7	\$170.0

GROSS STATE PRODUCT
A rendering of Wisconsin industries from the U.S. Department of Commerce shows the relative size of gaming in this state. Gaming's \$1.2 billion figure represents an average of all Wisconsin tribal gaming and is not reflected in the numbers from the government's list.


INDUSTRY	2002 AMOUNT (\$ BILLIONS)
Total	\$186.7
Agriculture, forestry and hunting	2.8
Crop and animal production, farms	2.8
Utilities	3.2
Construction	8.1
Manufacturing	42.8
Wholesale trade	16.8
Retail trade	13.8
Transportation and warehousing, excluding Postal Service	6.4
Information	8.6
Finance and insurance	13.8
Real estate, rental and leasing	22.2
Professional and technical services	7.8
Health care and social assistance	14.8
Arts, entertainment and recreation	1.3
Accommodation and food services	8.8
Government	28.8
Gaming	1.2

* Not all industries are shown.
Source: U.S. Department of Commerce, Bureau of Economic Analysis. **RIKA KANAOKA**, Milwaukee Journal-Sentinel file photo.

Graphic/Rika Kanaoka

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Archived Coverage

 **Special Section:**
Dealing with the casinos

Data on slot machine revenue is gathered by direct state access to tribal accounting systems and leaves little room for manipulation, the report says. But information on earnings from blackjack and other casino table games "is inherently less reliable" because tribes manually enter those numbers on reports turned in to the state, the report says.

State pari-mutuel taxes from dog tracks dropped nearly 16% to \$1.1 million in 2003-'04 because of the closing of the Hudson track and continued decline in patrons at the two remaining tracks in Kenosha and Delavan. Total wagering at the tracks in fiscal 2003-'04 was \$96.4 million.

State revenue from charitable bingo dropped a fraction of a percent last year to \$362,000. Charitable organizations reported \$80 million in revenue from bingo, raffles and other games.

The Meister report shows that tribal casinos have enjoyed rapid growth, compared with commercial casinos. Commercial casino revenue in the United States grew 6.7% last year to \$28.3 billion, while Indian gambling revenue rose 11.7% to nearly \$19 billion.

Tribal casino revenue now accounts for 38% of the overall casino market; a decade ago Indian gambling held about 20% of the overall market, according to Meister's report.

From the June 23, 2005, editions of the Milwaukee Journal Sentinel
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