

A M E R I C A N

March 2001

# INDIAN REPORT

Indian Country's News

**Tribes Strive to  
Protect Littlest  
Passengers**

**Alaska Regional  
Corporations Score  
Big at FCC Auction**



# Per Caps

## The Clamor Over Cash

# Per The Clamor Over Cash



# Caps

By Jeff Hinkle

**O**UR STORY BEGINS AT THE BUSY DESK OF L. BUDDY GWIN, located in the Mashantucket Pequot Nation tribal government office building. Gwin is a spokesperson for the tribe and chief among his duties is the phone call juggling he does as questions come in from all over the world. No sooner does he wrap up a call from a New York business reporter on line one than his cell phone rings with an inquiry from a New Zealand newshound. Meanwhile, a Belgian reporter holds patiently on line two.

"We hear from the media on a daily basis," says Gwin, "from all over the world. I know Fortune 500 companies that don't get as many calls as we do. It's perplexing to us what makes us so interesting."

That's an easy one. What makes the Pequots so interesting is that this tribe — which 15 years ago was not even recognized by the U.S. government — operates the largest and most successful casino in the world. Hands down. No shimmering high-rises in Las Vegas, Monte Carlo or Atlantic City compare.

The Pequots' Foxwoods Casino — nestled away in the bucolic woods of Connecticut — is the most successful gambling house on the planet. Last year *Fortune* magazine reported that Foxwoods generated a cool \$1 billion in annual profits for the tribe.

So, it is little wonder why reporters wait patiently in line to talk with Gwin in hopes that he might reveal some nugget of information that explains what makes Foxwoods — which just celebrated its ninth anniversary — such a success. And whether it's a seasoned Wall Street veteran doing the digging or some overseas reporter with a thick accent, one question inevitably comes up, Gwin says.

"How much?"

How much? How much in per caps do the Pequots pay out to its members every year? In other words, what kind of per capita dividend check can the average Pequot expect in his or her mailbox after the tribe tallies its casino earnings and pays its bills?

"I would say that is the number one question," says Gwin. "I get that at least once a day."

In fact he hears the inquiry so often that he doesn't even flinch. Instead, Gwin quietly reminds the inquisitive reporter that it is proprietary informa-

tion, which the tribe would rather not share.

According to *Fortune*, the Pequot per caps were in the “high five figures” annually — a number that Gwin said is “in the ballpark.”

Curiosity about the tribe’s distributions is not limited to media-types. Indeed, while researching this story, many that were interviewed — bureaucrats, tribal executives, public relations people — speculated aloud about the Pequots’ success and how that success plays out when dividend checks are put in the mail.

“On one end of the spectrum you have ...,” the interviewee would say when asked about the wide gamut of gambling per caps in Indian Country. “But on the other end of the spectrum you have the Pequots,” the interviewee would add, as if to suggest the Connecticut tribe occupied the rarefied top of the proverbial per cap pyramid.

But when pressed for an amount, all those who were doing the speculating confessed they really had no idea. Few outsiders know for sure what the Pequots — or for that matter what any of the other 46 tribes who have elected to distribute gaming per caps — actually pay their members.

“Those tribes hold that information close to their vests,” says Jacob Coin, former head of the National Indian Gaming Association and current president of the California Nations Indian Gaming Association. “We don’t ask that information, nor do we want to know.”

**A** lot of people are interested in Indian gaming per caps, and its not just reporters wondering, nor is that interest limited to the Pequots. Lawmakers suggesting cuts in funding for Native American programs often point to high gaming per caps as one more reason to consider those cuts. And other tribal leaders — perhaps responding to demands from their constituents — also try a pin down the facts on per cap amounts.

“Tribes keep that information quiet,” said one casino spokesman bluntly. “They don’t even share it with other tribes.”

But veiled information leads to rumors and misconceptions. In fact the only thing that appears to be more prevalent than people curious about per caps in Indian Country are the misconceptions surrounding the topic.

Perhaps the single biggest fallacy about the sharing of casino profits among tribal members is the notion that the money is tax-free. Nothing could be further from the truth.

“Under the Indian Gaming Regulatory Act, tribes can use gaming revenues for several purposes. Education, the welfare of the tribe, charitable donations, but anything beyond that, which is paid out directly to individuals, is subject to IRS taxes,” said one Internal Revenue spokesperson. “It is taxed at a high percent, some might say too high.”

That percentage fluctuates from year to year, but next month when tribal members join millions of other Americans in filling out their 1040s, most can expect to pay nearly 40 percent on any gaming per caps they have received. And in fact, since 1994, tribal leaders have been required to withhold roughly that ratio prior to any distributions.

“Per caps have always been taxable. There is no ambiguity about that,” says Hans Walker, a tax attorney, whose Washington, D.C., firm works exclusively with tribes. “The big question is when it comes to the children. Most tribes put minors’ per caps into trust funds. The question is, do tribes pay taxes on that money now or when those kids reach the age of majority — that’s when the tax question gets confusing.”

Walker says in the last decade, the IRS has shown little consistency in its decisions concerning tribes, taxes and trust accounts.

“Their rulings have been about half and half,” he says. “In about half the cases they have asked tribes to pay the taxes annually. In the other cases, the IRS has asked tribes to pay taxes once the child has reached the age of majority.”

But who is actually receiving per cap checks is another topic mired in misunderstanding. The National Indian Gaming Association (NIGA) — a Washington-based lobby group working on behalf of gaming tribes — spends a lot of time and money publicizing the numbers and erasing some of the misconceptions and stereotypes about Indians and casinos.

“There are 558 tribes recognized in the U.S.,” says the NIGA’s Sheila Morago. “Only 198 of those tribes are engaged in class II or III gaming. Twenty-three percent of those tribes account for more than 50 percent of Indian gaming revenue. There are only 47 tribes that pay per caps and that money can only be paid out after the tribe’s economic development, welfare and government obligations have been met.”

One stereotype that gaming tribes work hard to abolish is the image of Indians doing nothing but waiting by their mailboxes for the next check. In fact, many tribes — the Pequots included — require recipients to be either gainfully employed or enrolled as full-time students before any per cap money is issued.

There also seems to be some confusion about the effect casino profits has on tribes receiving

federal aid. Many believe casino money shared among members should somehow lessen or nullify a tribe’s eligibility for federal aid. But there is nothing in IGRA demanding such a trade off, although a few tribes, such as the Connecticut’s Mohegans, do reject federal aid on the strength of their Mohegan Sun Casino earnings. Such a move, they believe, fortifies their status as a sovereign nation.

But other tribes, who have done as well, if not better, than the Mohegans — such as the Pequots — have made no such gesture towards Uncle Sam.

Gwin says with good reason.

“The reliance on the federal government is part of those treaties. If you walk away from that relationship and give back federal money — however modest that award is — you are not upholding your part of the contract. You’ve breached the contract.”

Instead, he says, his nation accepts federal dollars and reallocates the money to tribes they feel are in need. That way, the Pequots control where the money goes, but set no risky precedents, nor do they breach any treaties, he explains.

But the murkiest element in per caps equation remains the actual dollar amounts on those checks. If the Pequots are distributing bonuses in the “high five-figure” range, does that mean the other 46 per cap tribes enjoy such a hefty bounty?

Hardly.

Oregon’s Confederated Tribes of Grande Ronde’s Spirit Mountain Casino generated more than \$50 million dollars in profit in 1999, according to newspaper reports. That stellar

business meant average per cap checks at year’s end in the amount of \$2,800 for the tribe’s 4,500 members. The Fort McDowell Indian Community of Arizona and the Saginaw Chippewa of Michigan both reportedly issued about \$30,000 in per caps to their respective members in 1999. Meanwhile, the 2,100 members of the Confederated Tribes of Umatilla of Oregon saw annual bonuses of \$825, thanks to their Wildhorse Resort.

For every tribe, such as the Shakopee Mdewakanton Sioux — whose powerhouse Mystic Lake Casino generates enough revenue to allow tribal members monthly per caps exceeding \$60,000 — there are less prosperous gaming tribes, such as the Blackfeet of Montana, who average per cap distributions of about \$50 a year.

## FACT:

### Per cap payments are not tax-free.

Most tribal members who receive gaming per caps can expect to pay nearly 40 percent in taxes this year. Since 1994, tribal officials have been required to withhold roughly that ratio prior to distribution.

Those zigzagging numbers — one tribe sharing annual \$50 bonuses, while another distributes close to \$1 million a year in per caps — illustrates one thing: a tribe's decision to issue per caps is a wild card bet.

After all the amounts of profit-sharing programs have everything to do with what sort of infrastructure improvements a tribe is facing.

"A lot of these tribes have a lot of catching up to do," says CNIGA's Coin.

Profits are also closely tied to a tribe's location.

When he's not fielding calls from reporters,

looked — what we try and tell other tribes — is that there are few First Nations out there sitting in this kind of market. We are very fortunate. We're centered between Boston, New York and Hartford, Conn. That is a big factor. Many tribes are located in rural areas — they don't have the market to support their casino. We are truly blessed. We are humbled by our own success."

"If you are looking for a national average, you're not going to find it," says Morago. "There is no way of providing an average. Per cap payments are distributed by tribes after whatever

ments," said an IRS representative flatly. "We do not keep statistics broken down by ethnic groups, because that would violate various laws."

Staff members at the BIA also declined any knowledge of per cap data.

Joe Jozefczyk, with the General Accounting Office's (GAO's) Tax Administration Division, which was asked by Congress to prepare a report on Indian Gaming in 1997, said per cap arrangements are proprietary agreements, requiring tribes to share numbers with only one federal agency — the NIGC. And even though the GAO has access to nearly every federal office in Washington, D.C., Jozefczyk says completing the 1997 report was no simple task. While completing the report, the GAO was able to collect financial reports from only 178 of the then 281 Indian gaming facilities in operation.

"Under IGRA, tribes must provide the National Indian Gaming Commission with annual financial reports," he said. "But at the time, the NIGC was a relatively new agency and didn't have all the information we needed."

Rick Schiff, chief of staff at the NIGC, said little has changed since 1997, at least when it comes to profit sharing. The NIGC pays scant attention to per cap arrangements among tribes, he says.

"No one at the NIGC has any systematic method for accounting for the distribution of per cap payments, nor is anyone monitoring per cap payments," said Schiff. "The Interior Secretary has a list of approved revenue allocation plans for tribes. Generally, those plans show percentages that [gaming] tribes plan to apply to housing, education, etc. What's left afterwards can be distributed to tribal members and treated as taxable distributions. But whether that amounts to a Christmas bonus or something more is up to how well the tribe did that year."

It is the 70 employees of the NIGC who are charged with overseeing the nation's tribal gaming operations, which now numbers 326. And Schiff says his agency, which receives part of its operating budget directly from tribal gaming revenues, investigates any complaints or charges about the mishandling of gaming profits. But, he says, there is no system in place for periodic audits of those casinos.

"Originally, following the passage of IGRA, the feeling was that states would maintain a stronger role in the oversight of tribal gaming. But in the last ten years, some states have asked Congress that we take on a greater role," he says. "Ultimately, though, it's the tribes that are the principal regulators of the Indian gaming industry."

One government administrator was not surprised by the lack of federal oversight or involvement in Indian gaming per cap arrange-

## Per Cap Range



**Hard figures on per cap amounts are not available. But news reports and interviews with tribal members offer the above illustration of the range of some per caps recently paid in Indian Country.**

L. Buddy Gwin spends time answering questions from representatives of other Indian Nations. Tribal leaders come from all over the country to see Foxwoods for themselves, hoping perhaps to tap into some of that Pequot magic.

But it is not that simple, says Gwin.

"The part of the discussion that gets over-

is left after the tribes provides for housing and education — and that amount changes."

She is right. In spite of the fact that various federal agencies monitor various aspects of casino per cap distributions, representatives of those agencies said no hard numbers are on file showing what tribes actually distribute.

"Our agency does not track per cap pay-

ments. "Nobody feels they have the right to tell successful businesses how to spend their money," he said. "But as soon as Indian tribes start making money in casinos, people start saying they need to be watched."

True enough, but that same bureaucrat agreed that the gambling industry in general operates in a gray cloud of questions. Charges of corruption are not uncommon. And whether it is an Indian tribe or a multinational corporation running the show, the media, industry regulators and the public at large react like nervous pit bosses when those charges surface.

"It's human nature," says Gwin. "We fear the unknown. And when something is not known, the rumors start."

And sometimes those rumors grab the attention of federal watchdogs.

The Oglala Sioux's Pine Ridge Reservation in South Dakota — with its 80 percent unemployment rate — has the grim distinction of being the poorest stretch of real estate in the country. Two years ago, a group of Pine Ridge residents, calling themselves the Grass Roots Oyate, began to wonder why the tribe's White Clay Casino was reaping a reported \$3 million a year in profits and tribal members were seeing little of it — in per caps or otherwise. The Oyates alleged that the 17-member tribal council was corrupt. Those allegations were voiced loud enough to capture the ear of the FBI, who last year seized the tribal books as part of an ongoing investigation of misdeeds at Pine Ridge.

Meanwhile, the Saginaw Chippewa of Michigan are still ironing out their well-publicized problems involving profits from their Soaring Eagle

Casino and membership squabbles within the tribe. In 1999 the dispute erupted into violence forcing federal intervention.

But casino profits can affect tribal politics in less extreme methods as well.

Buddy Gwin says he has heard of at least a few tribal leaders who were voted out of office in the last year over tribal per caps."

Marge Anderson, former chief executive of the Mille Lacs Band of Ojibwe Indians in Minnesota, was one of those leaders.

"The election was held in June and I was defeated," says Anderson, who lost her job after nine years of running the tribe. "My opponent — Melanie Benjamin — promised she would begin paying out per cap dividends. My position was, 'Let's do something for future generations,' but people wanted the money right now. They didn't want to wait five or ten years."

Anderson said during the decade she ran the two bands, members seemed satisfied with twice-yearly profit sharing checks from the Mille Lacs' two casinos.

"We would issue one around August — to help parents get their kids ready for school. We would pay the other at Christmas time. Both were usually about \$750," she says.

"Melanie Benjamin started talking about paying monthly bonuses. I was saying what's more important here — right now or the future? Ten years ago we didn't have anything. We were completely dependent upon federal handouts, but gaming was a blessing. We have medical

## FACT:

**Less than a quarter of all gaming tribes pay per caps.**

**Of the 198 tribes engaged in Class II or III gaming, fewer than 47 make per capita payments to their members.**



**Providing custom insurance programs for your Tribal Government and Gaming Facilities.**

**K&K**  
INSURANCE

**Insuring the world's fun.®**

1712 Magnavox Way, Fort Wayne, IN 46804  
(800) 440-5580 Fax (219) 459-5821  
Canada (800) 753-2632 CA #0034819  
[www.kandkinsurance.com](http://www.kandkinsurance.com)

care for all our people. We have new homes, new schools. People's attitudes are better. There's more pride; even small children show pride."

But in spite of the prosperity, Anderson lost the election by 200 votes — a sizable majority for a tribe of 3400 people. For her the entire election turned on the issue of more frequent per cap payments.

"The younger generation wanted to see more money right now," she says.

Several attempts were made to reach Benjamin — whom Anderson says has yet to initiate any new per cap payment plans — but those calls were not returned.



**My position was, 'Let's do something for future generations,' but people wanted the money right now. They didn't want to wait five or ten years.**

— Former Mille Lacs Chairwoman Marge Anderson

**D**isputes involving the Mille Lacs — or any tribe — their per caps and their casino business is just that, says Morago. It's their business.

"That's a tribal thing," she says. "That's a government thing. That's government in action. It's democracy at work. What's happening with the Mille Lacs people is between the Mille Lacs people. How they spend their money is up to them. That's sovereignty in action."

Jacob Coin agrees, but says it's not much of a stretch to recognize that demands for per cap payments is the type of issue that could make or break political careers in Indian Country.

"If that's the case, then we have a great deal of relearning to do. Indian tribes are not tribes because they want to run casinos. There is a long history of tribal governments running nations and caring for their people before gaming came about. If that rich history gets turned on its head because of the political nature of per caps, that would be unfortunate," he said.

"There is a reason that 25 percent of those tribes [distribute per caps]," Coin said. "Most tribes see a far greater good in investing all of the money back into the community. Most still see that as the best investment."

One tribe that is taking that approach is the Gila River Indian Community of Arizona. Tribal leaders there decided long ago that any profits realized from its two casinos would be poured back into the community at large.

"At this point they've placed the community over the individual," says Gila River spokesperson, Gary Bohnee. "We're the largest Indian community in the Phoenix area. We have approximately 20,000 members spread over 582 miles. We have an operating budget of \$100

million dollars — that's 80 different programs that need to be funded. Public works, housing, education, social services — we have a lot of catching up to do. Parts of our community still

need roads, telephones and utilities."

The tribe recently completed construction of the largest detention center in Indian Country, which not only houses local offenders but is also home to the tribe's rehab center, its police force and its 911 offices. Meanwhile, Gila River is putting the finishing touches on its \$120-million golf course and resort.

Expensive undertakings that leave little room for the discussion of per caps, says Bohnee. But he admits that demands for a piece of the action are inevitable.

"Our sister nation, the Salt River Community, recently passed a referendum to distribute per caps. They decided to distribute 35 percent of their gaming profits directly to tribal members. We know that will put pressure on the Gila River government," he says.

Indeed. The local press reports that the Salt River Pima-Maricopa Indian Community will distribute \$30,000 annually to each of that tribe's 6,000 members.

That's the same amount the 900 residents of the nearby Fort McDowell Mojave-Apache community receive in their per cap distributions. And Fort McDowell tribal bosses have sweetened the pot by initiating a student bonus plan aimed at keeping kids in school. Graduating students can earn between \$100,000 and \$250,000 gratuities once they receive their high school diplomas. However, ac-

ording to the *Phoenix New Times* newspaper, dropouts also qualify for the same bonuses once they reach the age of 21.

In the light of such cash rewards, how long can Gila River leaders stave off demands for per caps?

"That notion is always going to be there," says Bohnee. "Those voices will always be heard. But the position of the Council is that that segment of the community isn't enough of an issue right now to consider per caps."

Right now casino profits are split among seven tribal districts, Bohnee explains. That allows each community to decide how to spend their share of the ca-

sino revenue.

Such measures, he says, "dispels any notion that the people in power are 'keeping something from the community.'" By doing it that way, he says, tribal leaders short-circuit the types of corruption charges that have plagued Pine Ridge leaders.

It remains to be seen whether demands for per caps among the Gila River people will reach a loud enough pitch to force tribal leaders to

change their spending plans, which now include \$200 million earmarked for future projects.

But that unpredictability is part of the growing pains that come with tribal gaming, said the spokesperson for a prosperous casino tribe. His people, he says, have managed to achieve a balance with their thick casino profits: they underwrite infrastructure improvements and distribute per caps. Everyone goes home happy. But he realizes that not all tribes can achieve

such equilibrium.

"This is the first time many Indians have had the use of this tool called money," he said. "It's comparable to when the rifle was first introduced to Indians. It was a tool. Our tribe recognizes money is a tool — we use it as such. But other tribes — this is fairly new to them. They have not yet learned how to use this tool and it's causing some problems." □

**FACT:**

**Per cap payments are not guaranteed.**

Tribes that make per capita payments can only do so after their economic development, welfare and government obligations have been met.