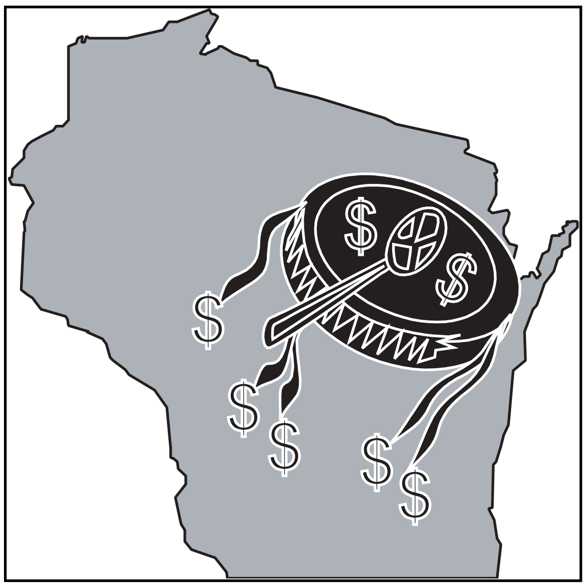
WILL WISCONSIN TAXPAYERS RECEIVE FAIR REVENUE SHARING FROM CASINOS?

DON'T BET ON IT!

JAMES H. MILLER
WILLIAM N. THOMPSON, PH.D.
CHRISTOPHER STREAM, PH.D.



Whenever you think the issue of Native American casino revenues and casino gambling in Wisconsin can't get worse, it does. The arguments and disagreements over "fair share" revenue from the tribal casinos to the state has been a constant agitant going back to the early 1990s. Last year many thought the issue was solved. Governor Doyle, on his own, developed a compact that would have dramatically increased the revenue the state would receive from the tribes. The leaders of the Wisconsin Legislature objected to the compact and initiated a lawsuit that challenged the legality of the compact. The Wisconsin Supreme Court ruled this particular compact was unconstitutional, because of a provision in the agreement that allowed it to be in perpetuity. As if this wasn't bad enough, the Court deadlocked on a second case, brought by the owners of the Dairyland Greyhound Racetrack. This case argued that the 1993 constitutional amendment banned all tribal casino gambling in Wisconsin. Obviously, these two rulings have exacerbated the problem of how to devise gambling compacts, which produce a fair revenue stream that directly benefits Wisconsin taxpayers.

In 2002, Professor William Thompson, of the University of Nevada-Las Vegas, published a study for the Wisconsin Policy Research Institute, *Not Exactly "A Fair Share"—Revenue Sharing and Native American Casinos in Wisconsin*, which examined gambling compacts across the country. The purpose of this research was to identify how the Native American tribes could fairly share their tribal casino revenue with the state. That study recommended a $90 million annual payment from the Native American tribes to the state of Wisconsin. The immediate reaction from the tribes was that this number was way too high and beyond their means. Two years later, the tribes would agree to a much larger contribution. Now all those negotiations are in limbo.

Because gambling revenue has exploded in this country over the last several years, we felt that it was time to reexamine how other states were approaching gambling revenues. Particularly we wanted to examine how states

James H. Miller *is president of the Wisconsin Policy Research Institute.* ***William N. Thompson****, Ph.D. is a professor of public administration at the University of Nevada-Las Vegas and a leading expert on casino gambling.* ***Christopher Stream****, Ph.D. is assistant professor of public administration at the University of Nevada-Las Vegas.*

were benefiting from taxes and revenue sharing from casinos and slot machines, whether the source is Native American or commercial companies. Because this type of data does not necessarily exist in one single place, Professor Thompson and his colleague, Professor Christopher Stream, aggregated the available data from across the country on combined gambling revenues at the state level. This data, drawn from a number of sources, presents a fascinating picture of the impact that gambling revenues are having across the country and raises some very serious questions about revenue sharing from Native American tribes to the state of Wisconsin. In 2003 total gambling revenue in the United States came to $47.2 billion dollars. These revenues produced a total of $6.6 billion in taxes and revenue sharing. Eleven casino states had commercial facilities that generated combined gambling revenues of $27.1 billion. These casinos gave state governments $4.2 billion in gambling taxes for the year, for a combined tax rate of $15.57%.

Six commercial casino states also had Native American casinos, as do 22 other states. There were 223 tribes in the 28 states who operated 411 casinos under the rules of the Indian Gaming Regulatory Act of 1988. These casinos generated $17.0 billion in gross gaming revenues (money wagered minus prize money given back to players) during 2003. They gave state governments $668.0 million in revenue sharing funds.

In addition nine states (plus Nevada) authorize slot machines operations outside of casinos. They are often called Video Lottery Terminals (VLTs). Rhode Island, Delaware, West Virginia, New Mexico, Iowa, and Louisiana allow slot machines at race tracks, while machines are permitted in restaurant or bar venues in South Dakota, Oregon, Montana, and Louisiana (which also has truck-stop machines). Nevada also permits slot machines outside of casino facilities, however, there are no separate revenue figures for these machines in Nevada. The nine VLT states produce gambling wins (net money taken away from players) of $3.96 billion, and give $1.63 billion of this amount (a combined tax rate of 41.14%) to state governments.

A close examination of the 22 states with gambling revenues and the amount that is collected from gambling as taxes or revenue sharing could provide insight into Wisconsin's potential revenues from these sources. The following table shows total gambling revenues, the amount of revenue sharing received by the states as well as the tax/revenue sharing percentage. An examination of the table shows no regional, political, or ideological difference between the states that have allowed some sort of gambling within their borders. Particularly interesting is the amount of revenue produced by video lottery terminals. The states that had these tend to be smaller, and they generated enormous amounts of revenue. Delaware and Rhode Island combined brought in over $350 million from non-casino wagering. Tax rates on this revenue ranged from 39% to 47%. Oregon, another state thought to be extremely progressive, received over $500 million per year, the result of a tax rate of 42% on combined gambling revenue of $1.2 billion. By comparison, Wisconsin received only $24 million from $1 billion of gambling revenue. Across the country states are now subsidizing their budgets with this new revenue stream. From the standpoint of taxpayers, this is good news. If all these gambling revenues ceased tomorrow, taxpayers would have to add another $6.6 billion to balance their state budgets. Whatever the moral arguments may be, gambling revenues are not going to disappear any time soon. In fact, since 2003, states have moved at rapid rates to increase their gambling revenues.

In the arena of new developments elsewhere, the most dramatic changes may be developing in California. Following adoption of compacts in 2001, as a result of the popular passage of a constitutional amendment (Proposal 1A), the state achieved a very small share of casino revenue; however, even that share was dedicated to specific projects and not to the general fund. In 2003, Governor Gray Davis sought to use massive funds from casinos in order to help balance the state gen-

States with Gambling Revenue and State-Level Tax or Revenue Sharing from Gambling 2003

	Combined Gambling Revenue	All Gambling Taxes and Revenue Sharing	Actual Tax/ Revenue Sharing Rate
Arizona	$1,218,300,000	$78,000,000	6.40%
California	$4,699,900,000	$100,000,000	2.13%
Colorado	$753,400,000	$95,600,000	12.69%
Connecticut	$2,157,000,000	$396,400,000	18.38%
Delaware	$502,000,000	$198,068,465	39.46%
Illinois	$1,709,000,000	$779,900,000	45.63%
Indiana	$2,299,000,000	$702,000,000	30.54%
Iowa	$1,354,000,000	$292,596,081	21.61%
Louisiana	$3,080,145,399	$652,910,559	21.20%
Michigan	$1,998,500,000	$107,220,738	5.37%
Mississippi	$2,700,000,000	$325,000,000	12.04%
Missouri	$1,330,000,000	$369,000,000	27.74%
Montana	$335,100,253	$48,030,038	14.33%
Nevada	$9,669,000,000	$776,500,000	8.03%
New Jersey	$4,490,000,000	$414,500,000	9.23%
New Mexico	$789,200,000	$74,359,305	9.42%
New York	$549,200,000	$38,900,000	7.08%
Oregon	$1,204,244,382	$530,970,000	44.09%
Rhode Island	$333,500,000	$157,879,679	47.34%
South Dakota	$335,048,892	$112,774,446	33.66%
W Virginia	$752,222,222	$234,688,941	31.20%
Wisconsin	$1,039,300,000	$24,000,000	2.31%
Totals	**$43,298,061,148**	**$6,509,298,252**	**15.03%**

Data from Professor William Thompson and Professor Christopher Stream

eral fund. He actually suggested that the state could receive $1.5 billion from tribes through new compacts. The compacts would have required tribes to give the state well over 25% of their revenues. As the tribes had already signed agreements to operate their casinos for 20 years, they did not exactly rush to his requests for renegotiations. As he scaled down his appetite for casino money, some tribes indicated a willingness to talk, although nothing materialized in terms of new compacts.

The budget situation was dreadful, and gave rise to a successful campaign to recall (and remove) Davis from office. In Davis' futile campaign efforts to retain his office he received considerable funding from native tribes in his state. The tribes also supported two other candidates as potential replacements for Davis in the event that he lost his office. However, a third alternative candidate was victorious in the replacement election. The successful Arnold Schwarzenegger did not receive any political contributions from tribes, and indeed he refused to request any such funding. During his campaign he criticized native gaming, decrying the compacts that Davis negotiated for not giving the state much more money. He suggested that the tribes should give 25% of their revenues if they were to say they were paying "their fair share." He referenced amounts tribes had agreed to pay in Connecticut and New York compacts. After Schwarzenegger took office in November 2003, he negotiated agreements with four new rural tribes providing for a 25% payment to the state from all casino revenues. The legislature approved the compacts. He promised a fifth new tribe a similar compact to operate a casino in the very urban suburb of San Pablo near Oakland. The legislature has yet to approve this agreement.

In 2004 voters in California rejected a referendum that would have allowed 30,000 machines at selected tracks and poker card clubs. The state would have received a tax rate of 35% had such machines been installed.

Michigan's general fund had been receiving 8% of the slot machine revenues from native casinos prior to 1998. The revenue sharing charge was considered a fee for having a monopoly on machine gaming. At that time, commercial casinos were licensed for Detroit, and the payments ceased. However, four newly-authorized casinos have agreed to pay the 8%. Three are currently operating. The state also raised the commercial gaming tax from 18% to 24%, with 12.1% of the tax going to the state general fund. The other share of the tax goes to local governments in Detroit.

Maine and Oklahoma have approved gaming machines for race tracks, and there are developments for new Native casinos, albeit without revenue sharing arrangements. New York approved race track machines in late 2001, as well as Native American casinos that pay the state 25% of their slot revenues. The new operations have partially begun.

Illinois provided the most shocking change, albeit a temporary change, when it authorized a top tax rate of 70% on commercial riverboat casino revenues. The sliding scale of revenues gave the state an effective 45% of casino revenues.

In 2004, the Legislature and Governor of Pennsylvania put formal approval on a plan that could bring more than 60,000 gambling machines to the Keystone State. They will be placed in as many as fourteen facilities, including the half-dozen racing venues in the state. The revenues from the machines will be taxed at a rate of 33% (or more), and with additional fees, promise to bring over $1 billion to the state treasury each year. Many pitfalls may hinder or prevent implementation of the plan, including a lawsuit challenging the legality of the legislative process in passing the law authorizing the plan.

Then there is Colorado. According to *The New York Times*, two Indian tribes, the Cheyenne and the Arapaho, have proposed an astonishing deal with the State of Colorado. The first part was a claim lodged last April with the U.S. Department of the Interior to reclaim 27 million acres in Colorado, which the tribes say belong to them under the terms of a treaty from 1851. The tribes then proposed that they would give up these land claims in Colorado in exchange for the rights to develop an enormous casino in the Denver area with up to 5,000 slot machines. In return the tribes agreed to pay Colorado $1 billion up front, or about 10 years worth of the projected profits from the casino. This would automatically become one of the largest casinos in the world. Initially, Colorado's Governor Bill Owens rejected the plan, but he faces term limits and cannot run for reelection in 2006.

This $1 billion proposal in Colorado, the efforts of Indians to build huge casinos in California and New York, and the potential proposal in Pennsylvania portends an acceleration in gambling revenues across the country, which may very well dwarf the $48 billion that the industry reported in 2003. As these mega-states begin to design serious programs to increase their state coffers, it is not inconceivable that within the next decade one of these states will generate more gambling revenue than Nevada.

For Wisconsin, it is important to examine what is happening in neighboring states. Illinois, Iowa, and Indiana have developed policies that produce non-tax revenues at a much higher rate than Wisconsin. At the other extreme, Minnesota's Native American gaming generates revenue of over $1 billion per year but, because of a very odd agreement, the state receives zero revenue sharing from their tribes. Over the years, the Wisconsin tribes have used the situation in Minnesota to justify their paltry contributions to the state.

This is where public policy positions become murky. There are three major considerations in a discussion of Wisconsin's Native American casinos. By law, Wisconsin tribes are sovereign nations and cannot be forced to pay taxes on any of their revenues. It is more difficult to view them as a potential revenue source in the same way as commercial gambling. The second part is equally as important. It is not written in any treaty or agreement that the Wisconsin tribes have any inalienable right to operate the most lucrative economic monopoly in the country. Wisconsin tribes with existing casinos have no competition now, nor will they likely have any competition from any private casino in the future. This has been a major disadvantage for the State of Wisconsin in negotiating with the tribes. To create competition in Wisconsin, the 1993 constitutional amendment, which forbids the expansion of gambling, would have to be overturned in order to create even the potential for a commercial casino to open. The state, therefore, has very little leverage in negotiating with the tribes.

Another possible revenue source for Wisconsin has been the possibility of the Menominee's purchasing Dairyland Greyhound Racetrack and transforming it into a mega-casino. This casino would assuredly be the most profitable in Wisconsin and the state would have the ability to extract a compact at a much higher rate than the existing casinos. A casino located in Kenosha would attract a large Illinois customer base, which would translate into a non-Wisconsin revenue sharing stream. The real problem with this casino is the other Native American tribes who have no interest in competition.

It is always good to remember that when Native American casinos do not pay their fair share, Wisconsin taxpayers pay it.

The third part of the equation is Wisconsin taxpayers. Herein lies the biggest irony about casino gambling in our state. When it comes to taxes — whether income, sales, gasoline, cigarette, or property — Wisconsin is always at the top of all lists of the fifty states. When it comes to collecting a fair share of revenue from the gambling industry, we rank second to last. While the average national rate is just over 15%, Wisconsin's is just over 2%. It is always good to remember that when Native American casinos do not pay their fair share, Wisconsin taxpayers pay it.

Doyle Proposals

As this article is being written, the Doyle administration is still trying to negotiate a long term compact with the Native American tribes. As this process moves along, there are several areas to examine. As the *Milwaukee Journal Sentine*l pointed out, the Governor's proposal for the 2005-07 budget is $222 million spread over two years, plus $60 million in payments withheld in the current biennium from the Ho-Chunk. This is about as good a deal as Wisconsin will see from the tribes. Remembering that Wisconsin does not have the same leverage or taxing power as Illinois, Iowa, or even Connecticut, our existing tribes cannot be expected to pay a premium when they have no competition. The amounts, however, should be fair for Wisconsin taxpayers. The problem is whether this initial amount is a balloon payment to cover that revenue stream dropping in future years. It would make more sense to establish a firm percentage, or a sliding scale, so that Wisconsin would have a clear idea of how much money they will collect in the future. If the Governor's purpose is simply to balance the next budget and not worry about the future, it would be a terrible position for Wisconsin taxpayers.

Another factor is that the tribes will likely make extremely large political contributions in the 2006 election cycle. The construction of these compacts should not be to benefit just politicians or the tribes. Giving the tribes a long-term agreement seems to be very fair if the revenues in return are adequate. In perpetuity is, however, a loony idea. A simple look at Minnesota shows how compacts that can't be changed are a disaster for taxpayers.

Finally, Republicans are going to have to accept that the current Doyle negotiations are probably as good a deal as the state can get. The one hope is that eventually politicians from both sides of the aisle, the many lobbyists, and the Native American tribes will try to do the right thing for Wisconsin taxpayers. But, don't bet on it!