

New Mexico Gaming Control Board Advisory Opinion

May 12, 2006

No. 2006-1

RE: Participation Fees / Lease Agreements

The purpose of this advisory opinion is to address the validity of deductions for **Participation Fees/Lease Agreements**, which have been taken as deductions by various casinos in New Mexico in calculating revenue sharing payments. The NM Gaming Control Board has taken time and made diligent efforts to carefully evaluate participation slots, particularly with respect to their impact on the calculation of Revenue Sharing under §11(C)(1) of the 2001 Tribal/State Compact.

Participation Fees/Lease Agreements are payments made by casinos to machine distributors or manufactures for the “*use*” of gaming machines. **Participation Fees/Lease Agreements** are distinguishable from deductions for Progressives which are based on a jackpot win such that each casino gets to deduct the portion they contributed to the jackpot.

§11 sets out the formula and method for calculating revenue sharing payments:

Section 11 – Revenue Sharing.

C. Calculation of Payment Amounts.

1. *As used in this Compact, “Net Win” means the total amount wagered in Class III Gaming at a Gaming Facility, on all Gaming Machines less:*

(a) the amount paid out in prizes, including the cost to the Tribe of noncash prizes, won on Gaming Machines;

(b) the amount paid to the State by the Tribe under the provisions of Section 4(E)(5) of this Compact; and

(c) the sum of two hundred seventy-five thousand dollars (\$275,000) per year as an amount representing tribal regulatory costs, which amount shall increase by three percent (3%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

Based on our evaluation of **Participation Fees/Lease Agreements**, we have determined that deductions of this nature do not qualify under (a), (b), or (c), as a valid deduction under §11 when calculating revenue sharing payments to the State.

Fees or lease payments that casinos are paying to distributors or manufacturers are a percentage of the revenue generated by participating gaming machines that belong to equipment distributors or manufacturers for “*use*” of the machines is a business expense, not a prize or non-cash prize “*won*” on a gaming machine as indicated in subsection (a). Therefore, these fees, not being “*won*” on a gaming machine, are not an allowable deduction.