

GAO

Report to the Chairman, Committee on  
Ways and Means, House of  
Representatives

---

May 1997

# TAX POLICY

## A Profile of the Indian Gaming Industry



---

---

**General Government Division**

B-275479

May 5, 1997

The Honorable Bill Archer  
Chairman, Committee on Ways and Means  
House of Representatives

Dear Mr. Chairman:

Indian gaming activities and the revenues generated from them have grown substantially since the late 1980s. Recognizing this, Congress, as part of its deliberations on the Seven-Year Balanced Budget Reconciliation Act of 1995, debated taxing the income earned from gaming activities by Indian tribes and also by some tax-exempt organizations. Since the debate, you have asked us to provide you with information on the Indian gaming industry.

This report is a follow-up to the preliminary data we provided you in August 1996.<sup>1</sup> In this report, our objectives are to provide you with (1) an updated profile of the Indian gaming industry, (2) information on the amount of transfers to the tribes from their gaming facilities, (3) a comparison of Indian gaming revenues with the revenues generated by other legalized gaming activities, and (4) a summary of the federal tax treatment of Indian tribes and tribe members.

---

## Background

In the late 1970s, Indian tribes began authorizing or conducting various types of gaming activity with only tribal oversight. In 1987, the Supreme Court confirmed that Indian tribes had authority to operate gaming establishments on their trust lands without having to comply with state laws and regulations.<sup>2</sup> To resolve outstanding issues between tribes and states and to provide oversight, Congress passed the Indian Gaming Regulatory Act of 1988 (IGRA).<sup>3</sup>

IGRA established the following three classes of gaming to be regulated by a combination of the tribal governments, state governments, Bureau of Indian Affairs (BIA)—an agency of the Department of the Interior, and National Indian Gaming Commission (NIGC).

---

<sup>1</sup>See [Profile of Indian Gaming \(GAO/GGD-96-148R, Aug. 20, 1996\)](#).

<sup>2</sup>[California v. Cabazon Band of Mission Indians, 480 U.S. 202 \(1987\)](#).

<sup>3</sup>See 25 U.S.C. sections 2701-2721.

- **Class I gaming** consists of social gaming for nominal prizes or ceremonial gaming. It is regulated solely by the tribe, and no financial reporting to other authorities is required.
- **Class II gaming** includes bingo, pull-tabs, and punch-boards. Tribes can conduct only class II games that are legal under state law, and these games are regulated by the tribes and NIGC.
- **Class III gaming** consists of all other forms of gaming, including casino games, slot machines, and pari-mutuel betting.<sup>4</sup> Class III games are regulated as indicated below.

Tribes are required to obtain state, NIGC, and Department of Interior approval to establish and operate class III gaming facilities. IGRA requires that tribes and states negotiate a tribal-state compact to balance the interests of both the state and the tribe. The Secretary of the Interior is authorized to approve any tribal-state compact and has delegated this authority to the Assistant Secretary—Indian Affairs, who is responsible for BIA. All class II and III gaming operations on Indian lands are required to submit copies of their annual financial statement audits to NIGC.<sup>5</sup>

The tribal-state compact is an agreement that may include provisions concerning standards for the operation and maintenance of the gaming facility, the application of laws and regulations of the tribe or the state that are related to the licensing and regulation of the gaming activity, and the assessment by the state of amounts necessary to defray the costs of regulating the gaming activity.

IGRA specifies that the tribal ordinance concerning the conduct of class II or III gaming on Indian lands within the tribe's jurisdiction must provide that the net revenues from any tribal gaming are not to be used for purposes other than to (1) fund tribal government operations or programs, (2) provide for the general welfare of the Indian tribe and its members, (3) promote tribal economic development, (4) donate to charitable organizations, or (5) help fund operations of local government agencies. Tribes may distribute a portion of their net revenues directly to tribal members, provided that the tribes have a revenue allocation plan approved by BIA. This plan is to describe how tribes intend to allocate net revenues among various governmental, educational, and charitable projects, including direct payments to tribal members.

---

<sup>4</sup>Pari-mutuel betting is generally considered to include on-track, off-track, and inter-track betting on horse racing, dog racing, and jai-alai.

<sup>5</sup>See 25 C.F.R. section 571.13 and 25 U.S.C. section 2710(b)(2)(C) (1996).

---

## Results in Brief

As of December 31, 1996, 184 tribes were operating 281 gaming facilities. For 178 of these facilities, operated by 126 tribes, we obtained and examined 1995 financial statements.<sup>6</sup> These 178 facilities reported generating gaming revenues (dollars wagered minus payouts) of about \$4.5 billion, with 8 of them accounting for about 40 percent of these revenues. The gaming facilities also reported generating over \$300 million in revenues from sales such as food, beverages, and hotel rooms. Net income (total revenues minus expenses) reported for the 178 facilities was about \$1.9 billion, representing 38 percent of the \$4.9 billion total revenues.

According to the financial statements, about \$1.6 billion was transferred to 106 tribes in 1995.<sup>7</sup> Of this \$1.6 billion, more than 50 percent went to 10 tribes. For 20 tribes, the financial statements did not show any transfers. None of the financial statements indicated how the transfers were used by the tribes.

Gaming revenues generated by all class II and class III Indian facilities for which we had financial statements equaled at least 10 percent of the estimated gaming revenues generated by legalized gaming (including casinos, lotteries, pari-mutuel betting, and others) reported by the gaming industry in 1995.

We compared class III Indian facility revenues with reported revenues from Atlantic City and Nevada casinos. In the aggregate, 109 class III Indian facilities generated about the same total amount in gaming revenues as the 12 Atlantic City casinos and more than half the gaming revenues of the 213 Nevada casinos. Average gaming revenues for these Indian facilities were significantly less than those of Atlantic City casinos but about equal to the average for the Nevada casinos. In terms of the distribution of gaming revenues among the facilities, class III Indian facilities were similar to Nevada casinos—a small proportion of the facilities accounted for a large share of the aggregate gaming revenues. By contrast, the gaming revenues of the 12 Atlantic City casinos were more equally distributed.

---

<sup>6</sup>Some facilities were not included in our analyses because they were new and financial statements were not yet required; the financial statements submitted were incomplete; or the financial statements were not filed as of the date we completed our data collection. (See app. I.)

<sup>7</sup>In addition to transfers, some tribes received a total of \$91 million from the gaming facilities for items such as taxes and fees, rent and other charges, and cost reimbursements, which are not included in the \$1.6 billion.

In addition, our analyses revealed that the largest class III Indian facilities generated higher operating income (income from gaming and other normal operations, such as concessions) as a percentage of total revenues than the largest Nevada and all Atlantic City casinos. According to industry experts, this difference is partly due to the fact that these Nevada and Atlantic City casinos have competition in close proximity and are subject to various state taxes and costs that were not generally incurred by these Indian facilities.

IRS has determined that Indian tribes are not subject to federal income tax because they are political agencies not included within the meaning of the income tax provisions of the Internal Revenue Code. Thus, revenues generated from gaming operations of federally recognized Indian tribes are not taxable. Indian tribes are not, however, tax-exempt organizations within the meaning of provisions of the Code that exempt certain categories of organizations from income tax. Individual tribe members are subject to federal income tax. Payments of net revenues from gaming operations to members of Indian tribes are generally taxable, and the tribe is responsible for withholding income taxes from the payments.

## Scope and Methodology

We determined the number of tribes with gaming facilities by reviewing documents provided by NIGC, which identified all tribes with gaming operations as of December 31, 1996. To perform our analyses on revenues, costs and expenses, and net income, for example, we obtained 1995 financial statements that were submitted to NIGC as of November 22, 1996. The sample of facilities included in our report consists of the 178 gaming facilities represented by these financial statements. The sample is not representative of the universe of all Indian gaming facilities. Some facilities were not included in our analyses because they were new and not yet required to file financial statements, the financial statements submitted were incomplete, or the financial statements were not filed as of the date we completed our data collection (see app. I). We used Audit and Accounting Guide: Audits of Casinos, published by the American Institute of Certified Public Accountants, and spoke with industry experts for guidance in deciding what data to extract from the financial statements and what analyses to perform on these data.

We also used the financial statements to determine the amount of transfers to the tribes. The transfers as described in this report represent the amounts in the financial statements allocated to the “tribes.” The amounts could have been received by the tribal government or tribal

---

members, but we were not able to determine this because the financial statements did not indicate how the transfers were used or who received them.

To compare Indian gaming with other legalized gaming activities, we used data reported in International Gaming and Wagering Business and financial statement data submitted to the Nevada and Atlantic City gaming commissions.<sup>8</sup>

To describe the legal issues regarding the taxation of Indian gaming revenues, we reviewed relevant sections of the Internal Revenue Code and the IRS and Department of the Treasury rulings and regulations pertaining to the taxation of Indian tribes. We also interviewed officials from Treasury, IRS, and BIA. (See app. I for more details on our scope and methodology.)

We conducted our review from October 1996 through March 1997 in accordance with generally accepted government auditing standards. We obtained comments on a draft of this report from the Internal Revenue Service, the Department of the Interior, and the Chair of NIGC. These comments are discussed at the end of this letter.

---

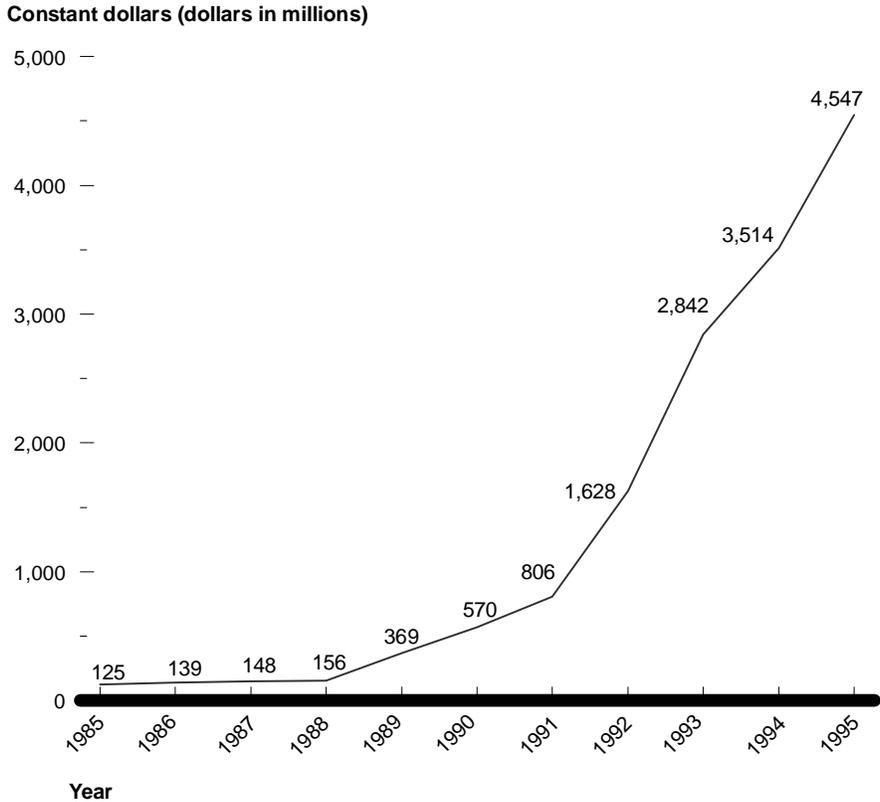
## Profile of the Indian Gaming Industry

As shown in figure 1, Indian gaming revenues have grown significantly since 1988 when IGRA was enacted. IGRA provided the regulatory framework for tribes to establish and operate gaming facilities.

---

<sup>8</sup>International Gaming and Wagering Business is a trade publication that annually publishes estimates prepared by Christiansen/Cummings Associates, Inc., on the amounts of money wagered and spent on each type of legal gambling activity in the United States.

**Figure 1: Indian Gaming Revenues, 1985-95**



Note: Conversion to 1995 constant dollars used the Consumer Price Index.

Source: International Gaming and Wagering Business, selected issues between 1985 and 1995; and GAO analysis of 1995 financial statements that were filed with NIGC as of November 22, 1996.

### More Than Half of Continental U.S. Tribes Operated Gaming Facilities

According to information provided by NIGC, 184 of the 555 Indian tribes officially recognized by the United States were operating a total of 281 gaming facilities as of December 31, 1996. Of the 184 tribes, 182 were in the continental United States, representing 55 percent of all continental U.S. tribes (329). The remaining two tribes were in Alaska. According to

---

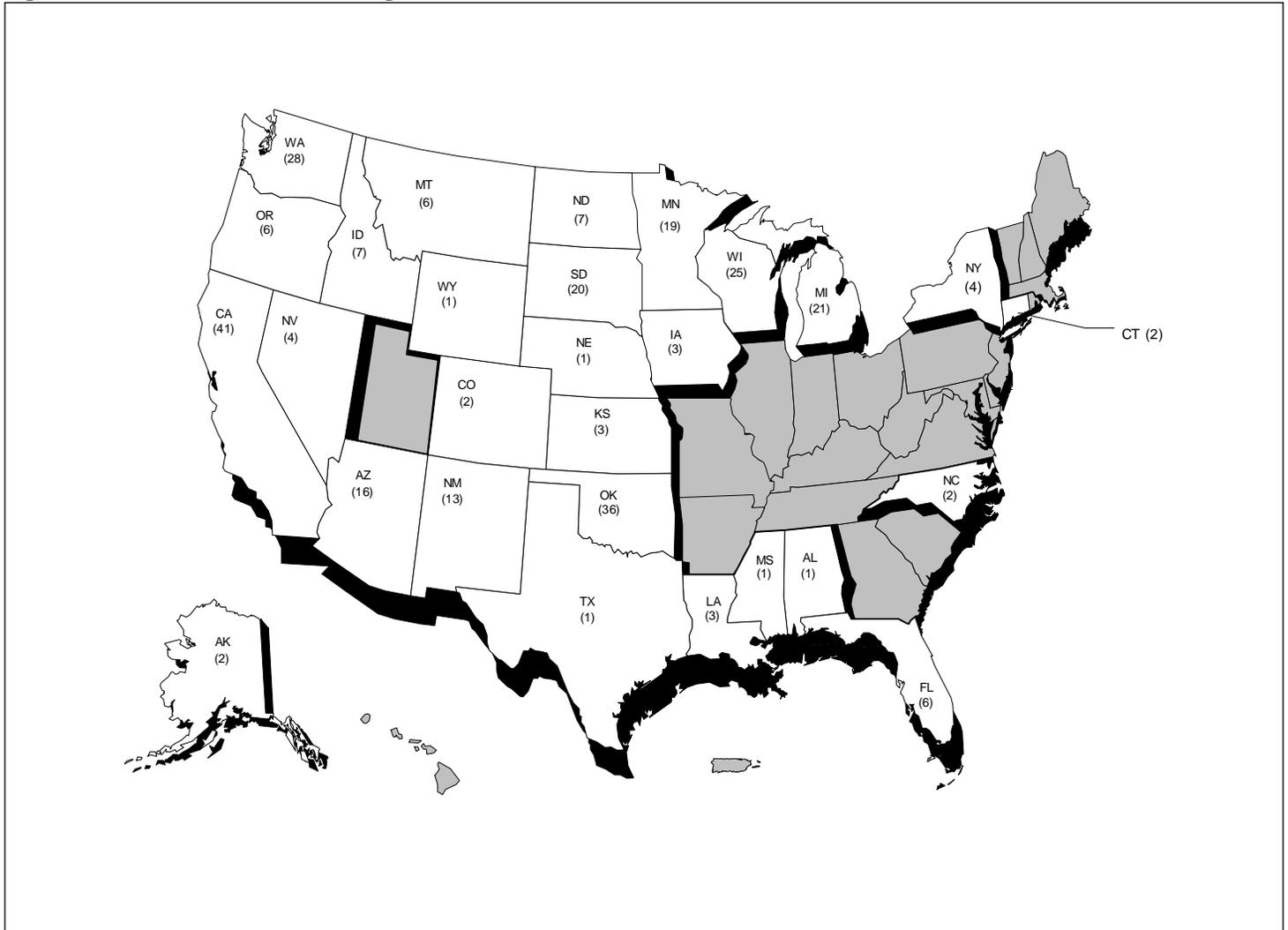
NIGC, the 226 tribes in Alaska are generally too remote or too small to operate gaming facilities.<sup>9</sup>

An additional 32 tribes had been authorized to operate gaming facilities but had not opened any as of December 31, 1996, according to NIGC information. (See fig. 2 for the distribution of Indian gaming facilities in operation.)

---

<sup>9</sup>Additionally, it is unclear whether certain lands set aside for Alaska natives under the Alaska Native Claims Settlement Act meet the IGRA definition of Indian lands on which gaming may be conducted. (See 43 U.S.C. 1601 et seq.)

Figure 2: Distribution of Indian Gaming Facilities



Note 1: Map does not show those operations that were closed by December 31, 1996.

Note 2: This information may not agree with NIGC's records because of differences in methodologies used to identify and count facilities.

Source: GAO analysis of NIGC's list of gaming facilities as of December 31, 1996.

### Revenues From Indian Gaming Facilities Exceeded \$4 Billion

From our analyses of the 178 gaming facilities' financial statements, we found that reported gaming revenues were about \$4.5 billion and revenues from other activities, such as food, beverages, and hotel rooms, were over

\$300 million (see table 1). Median gaming revenues for class II facilities were about \$2.5 million and for class III, about \$12.7 million.<sup>10</sup>

Total net income was about \$1.9 billion, with a median of \$0.6 million for class II and \$4.9 million for class III facilities. About 90 percent of the facilities generated net income, and about 10 percent generated net losses. Most of the facilities were class III, and they accounted for a large majority of all gaming revenues, total revenues, and net income.

**Table 1: 1995 Revenues, Costs and Expenses, and Net Income for Class II and III Indian Gaming Facilities**

Income statement item	Dollars in millions			Percentage of total		
	Class II (N=66) <sup>a</sup>	Class III (N=112) <sup>a</sup>	Total (N=178) <sup>a</sup>	Class II	Class III	Total
Revenue						
Gaming	\$568	\$3,979	\$4,547	12%	88%	100%
Other <sup>b</sup>	35	306	341	10	90	100
Total	603	4,285	4,888	12	88	100
Costs and expenses	367	2,644	3,011	12	88	100
Net income	236	1,641	1,877	13	87	100

<sup>a</sup>The "N" represents number of facilities.

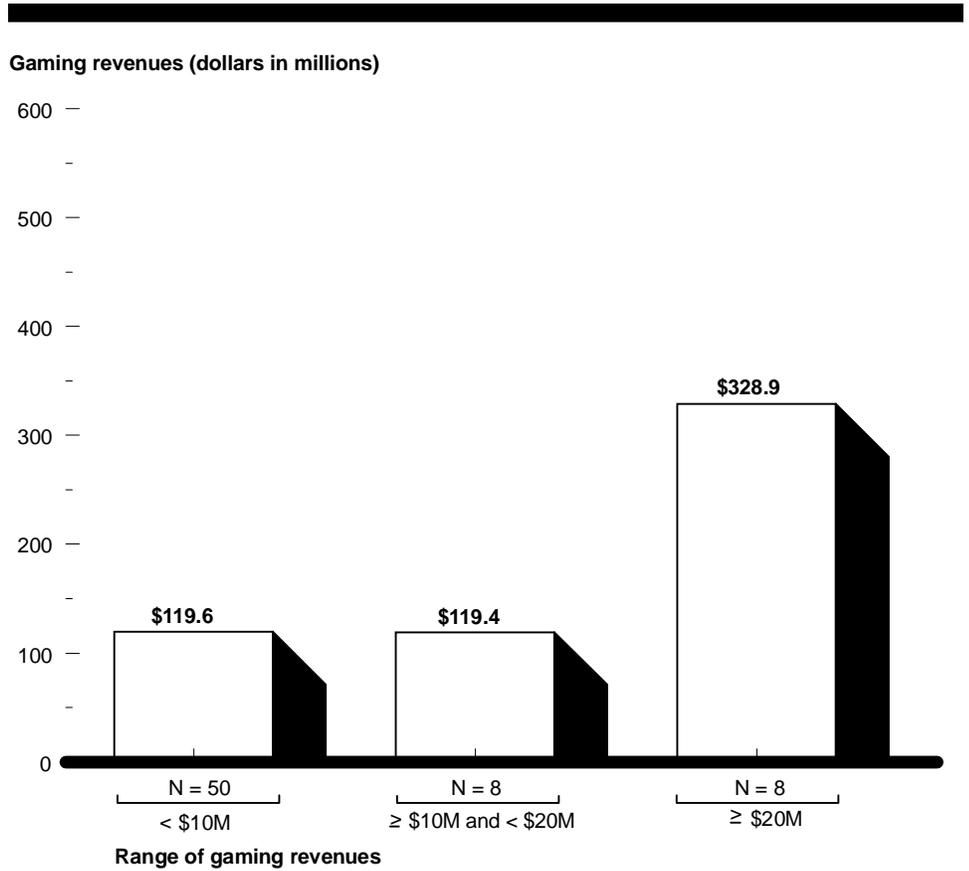
<sup>b</sup>Other revenues include, for example, revenues from food, beverages, hotel rooms, and interest.

Source: GAO analysis of 1995 financial statements that were filed with NIGC as of November 22, 1996.

About 40 percent of all gaming revenues were generated by eight of the class III gaming facilities. Figure 3 shows the distribution of gaming revenues for the 66 class II Indian facilities represented in our analysis. More than half of all class II gaming revenues were generated by eight facilities with gaming revenues of at least \$20 million.

<sup>10</sup>See appendix I for methodology used to account for class II and class III facilities.

**Figure 3: Distribution of Class II Facilities' Gaming Revenues**

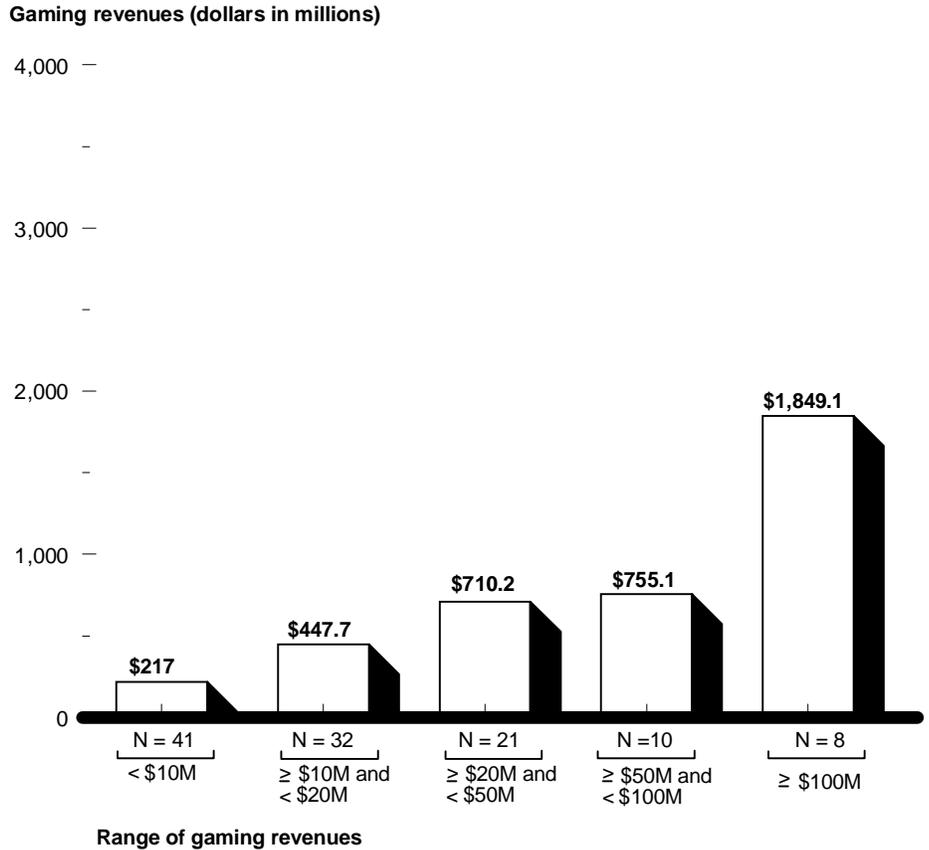


Note: The "N" represents the number of facilities.

Source: GAO analysis of 1995 financial statements that were filed with NIGC as of November 22, 1996.

Figure 4 shows the distribution of gaming revenues for the 112 class III Indian facilities represented in our analysis. Almost half of the gaming revenues were generated by eight facilities with gaming revenues of at least \$100 million each.

**Figure 4: Distribution of Class III Facilities' Gaming Revenues**



Note: The "N" represents the number of facilities.

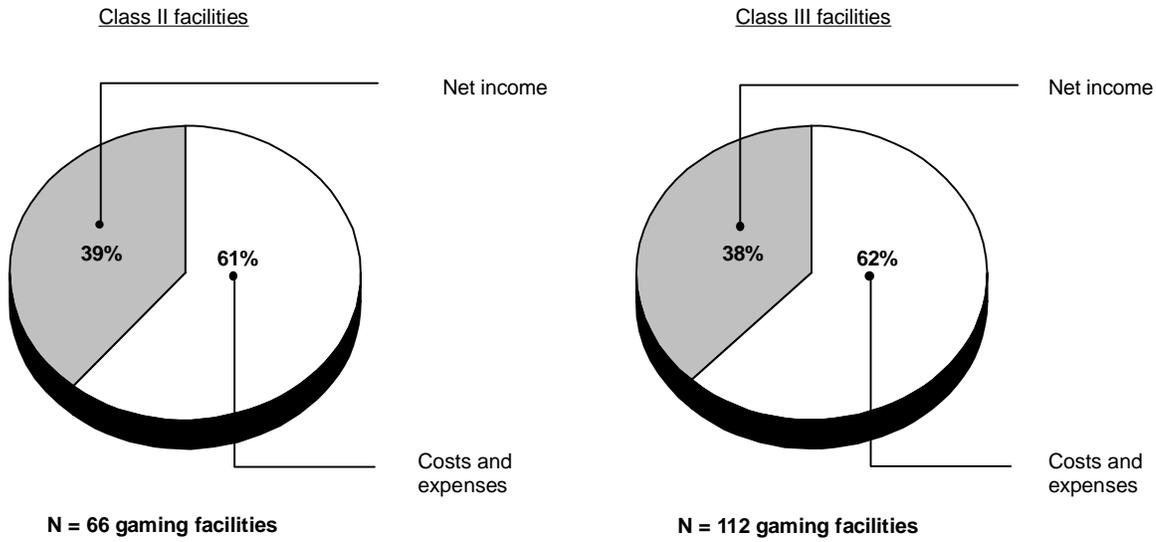
Source: GAO analysis of 1995 financial statements that were filed with NIGC as of November 22, 1996.

**Net Income Accounted for 38 Percent of Total Reported Revenues**

In total, net income of Indian gaming facilities (class II and III) was about 38 percent of total reported revenues. Net income as a percent of total revenues was about the same for class II and class III facilities (see fig. 5).<sup>11</sup>

<sup>11</sup>Figures 5 and 6 are based on total revenues, because net income includes more than gaming revenues.

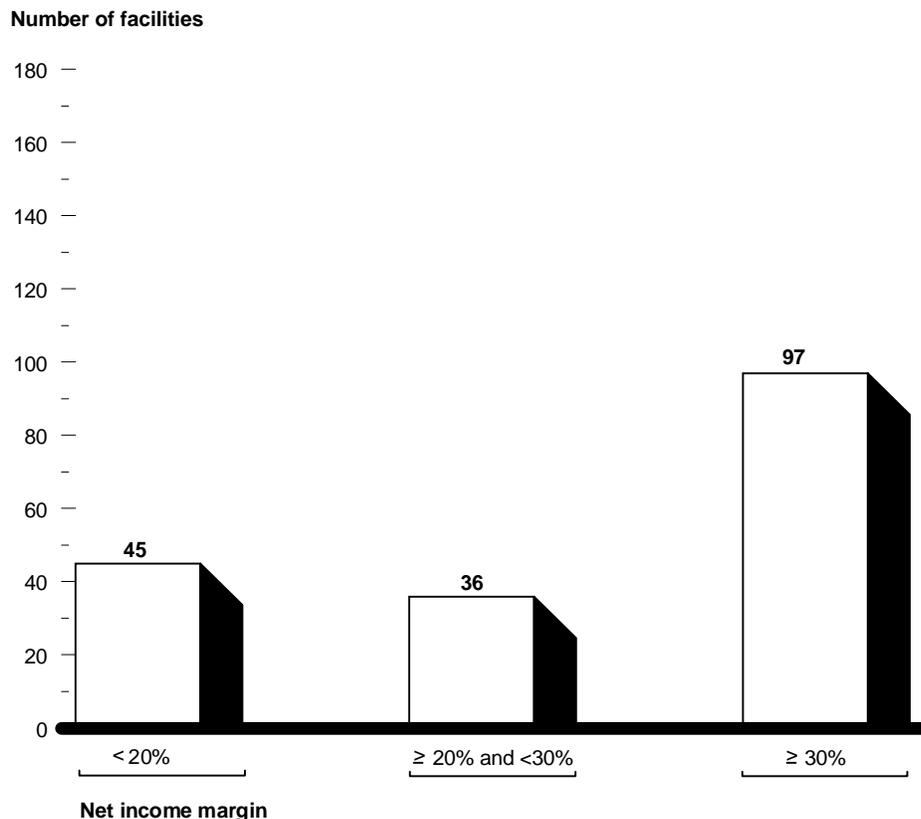
**Figure 5: Costs and Expenses and Net Income Margins**



Source: GAO analysis of 1995 financial statements that were filed with NIGC as of November 22, 1996.

In addition, the net income of about half of the Indian gaming facilities was at least 30 percent of their total revenues (see fig. 6).

**Figure 6: Facilities and Net Income Margins**



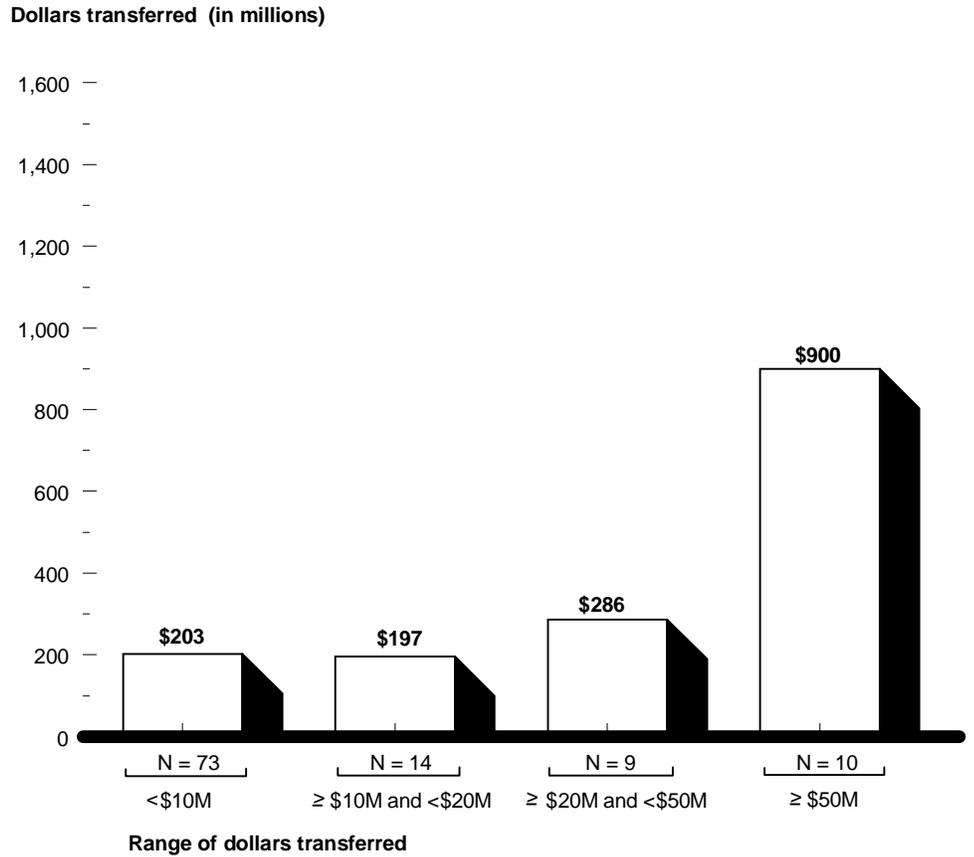
Source: GAO analysis of 1995 financial statements that were filed with NIGC as of November 22, 1996.

**Most Tribes Received Transfers From Gaming Facilities**

Of the 126 tribes included in our analysis, 106 reported receiving about \$1.6 billion in transfers from their gaming facilities, as shown in figure 7. These 106 tribes operated 149 gaming facilities.<sup>12</sup> Ten of the tribes reported receiving transfers of at least \$50 million each and accounted for more than half of the total transferred. The financial statements of 20 of the 126 tribes did not show transfers from their gaming facilities.

<sup>12</sup>In addition to transfers, some tribes received a total of \$91 million from the gaming facilities for such items as taxes and fees, rent and other charges, and cost reimbursements, which are not included in the \$1.6 billion.

**Figure 7: Distribution of Funds  
Reportedly Transferred to 106 Tribes**



Note: The "N" represents the number of tribes.

Source: GAO analysis of 1995 financial statements that were filed with NIGC as of November 22, 1996.

## Comparison of Indian Gaming With Other U.S. Legalized Gaming

### Indian Gaming Revenues Represented at Least 10 Percent of the U.S. Market in 1995

Table 2 shows that Indian gaming revenues (class II and III) were at least 10 percent of the revenues estimated to have been generated by legal gaming in 1995 and compares Indian gaming to other legalized gaming. Because our sample of financial statements did not cover all existing Indian facilities, the 10 percent market share could be higher.

**Table 2: Gaming Revenue Market Shares, 1995**

Type of gaming	Percentage of total
Casinos (does not include Indian)	40%
Lotteries	34
Indian gaming (class II and III)	10
Pari-mutuels	8
Charitable games	3
Charitable bingo	2
Card rooms and bookmaking	2
<b>Total<sup>a</sup></b>	<b>100</b>

<sup>a</sup>Total does not sum to 100 because of rounding.

Source: The percentage of Indian gaming was based on GAO's analysis of class II and III 1995 financial statements that were filed with NIGC as of November 22, 1996. The percentages of other legalized gaming were calculated from estimates reported in International Gaming and Wagering Business, Vol. 17, No. 8, August 1996.

Table 3 gives a breakdown of the casino segment of the gaming industry, including class III Indian gaming.

**Table 3: Casino Gaming Revenue Shares, 1995**

<b>Casinos</b>	<b>Percentage of total</b>
Nevada/New Jersey slot machines	32%
Riverboats	21
Indian gaming (class III)	18
Nevada/New Jersey table games	18
Noncasino devices	6
Other land-based casinos	2
Deepwater cruise ships	1
Cruises-to-nowhere	1
Other commercial gambling	1
<b>Total</b>	<b>100</b>

Source: The percentage of Indian gaming was based on GAO's analysis of class III 1995 financial statements that were filed with NIGC as of November 22, 1996. The percentages of casino gaming were calculated from estimates reported in International Gaming and Wagering Business, Vol. 17, No. 8, August 1996.

### Class III Indian Gaming and Nevada and Atlantic City Casinos

In total, gaming revenues generated by class III Indian facilities and Atlantic City casinos in 1995 were similar, as shown in table 4. In addition, the average gaming revenues generated by class III Indian facilities and Nevada casinos were similar. The comparisons are for facilities and casinos with at least \$1 million in gaming revenues because that was how data were reported for Nevada.

**Table 4: Reported Indian, Nevada, and Atlantic City Gaming Revenues, 1995<sup>a</sup>**

Dollars in thousands

<b>Income statement item</b>	<b>Indian class III</b>	<b>Nevada</b>	<b>Atlantic City</b>
Gaming revenues	\$3,976,892	\$7,030,994	\$3,627,820
Other revenues <sup>b</sup>	290,210	4,016,239	350,812
Total revenues <sup>c</sup>	\$4,267,102	\$11,047,234	3,978,632
Gaming revenues as a percentage of total	93	64	91
Average gaming revenues	\$36,485	\$33,009	\$302,318
Number of facilities	109	213	12

<sup>a</sup>For facilities and casinos with \$1 million and more in gaming revenues.

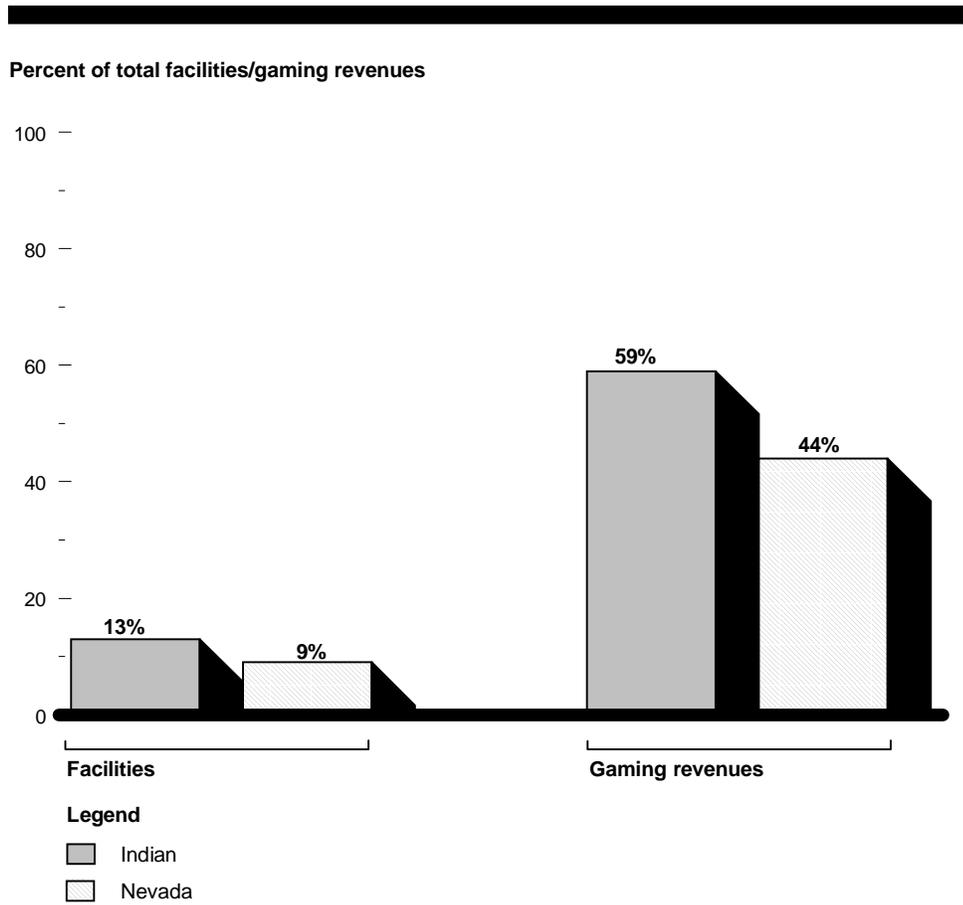
<sup>b</sup>Other revenues include, for example, revenues from food, beverages, and hotel rooms; interest was excluded.

<sup>c</sup>Total may not sum because of rounding.

Source: GAO analysis of class III 1995 financial statements that were filed with NIGC as of November 22, 1996; Nevada Gaming Abstract, December 1995, with financial data as of June 30, 1995; and financial statement analyses prepared by the New Jersey Casino Control Commission, March 7, 1996, for financial data as of June 30, 1995.

A small proportion of both class III Indian facilities and Nevada casinos generated significant amounts in gaming revenues and accounted for a large share of their respective aggregate gaming revenues (see fig. 8). Specifically, 13 percent of Indian class III facilities generated 59 percent of the Indian gaming revenues. Atlantic City casinos are not shown because their gaming revenues were more equally distributed. For example, 50 percent of the casinos generated about 59 percent of the gaming revenues.

**Figure 8: Reported Class III Indian Facilities and Nevada Casinos With Gaming Revenues of \$72 Million and More**



Note: The Nevada casinos in this analysis are limited to those casinos reported by the Nevada Gaming Abstract as generating gaming revenues of \$72 million and more. Nevada may have other casinos with gaming revenues of \$72 million and more, but because of limitations in the way the data were reported, we were not able to determine such casinos.

Source: GAO analysis of class III 1995 financial statements that were filed with NIGC as of November 22, 1996; and Nevada Gaming Abstract, December 1995, with financial data as of June 30, 1995.

**Operating Income as a Percentage of Total Revenues of Large Class III Indian Facilities Was Almost Twice That of Large Nevada and Atlantic City Casinos**

Operating income as a percentage of total revenues for large class III Indian facilities was almost twice as much as that of large Nevada and Atlantic City casinos. Table 5 shows the results of our analysis of operating income for class III Indian facilities and for Nevada and Atlantic City casinos with gaming revenues of \$72 million and more.<sup>13</sup> Operating income is a common measure used by industry experts to analyze and compare the profitability of businesses. It discounts the effects of capital structure and other nonoperating incomes and expenses that are not directly related to the performance of the business operations. (See the glossary for further details.)

**Table 5: Reported Operating Income of Facilities and Casinos With Gaming Revenues of \$72 Million and More, 1995**

Income statement item	Dollars in millions			Percentage of total revenues		
	Class III (N=14) <sup>a</sup>	Nevada (N=19) <sup>a,b</sup>	Atlantic City (N=12) <sup>a</sup>	Class III	Nevada	Atlantic City
	Revenue					
Gaming	\$2,354	\$3,086	\$3,628	94%	58%	91%
Other <sup>c</sup>	141	2,250	351	6	42	9
Total <sup>d</sup>	2,496	5,336	3,979	100	100	100
Costs and expenses	1,307	4,196	2,996	52	79	75
Operating income	1,189	1,141	982	48	21	25

<sup>a</sup>The "N" represents number of facilities.

<sup>b</sup>The Nevada casinos in this analysis are limited to those casinos reported by the Nevada Gaming Abstract as generating gaming revenues of \$72 million and more. Nevada may have other casinos with gaming revenues of \$72 million and more, but because of limitations in the way the data were reported, we were not able to determine such casinos.

<sup>c</sup>Other revenues include, for example, revenues from food, beverages, and hotel rooms; interest was excluded.

<sup>d</sup>Totals may not sum because of rounding.

Source: GAO analysis of class III 1995 financial statements that were filed with NIGC as of November 22, 1996; Nevada Gaming Abstract, December 1995, with financial data as of June 30, 1995; and financial statement analyses prepared by the New Jersey Casino Control Commission, March 7, 1996, for financial data as of June 30, 1995.

According to industry experts, the difference in operating income margin (operating income as a percentage of total revenues) between these 14 class III facilities and these Nevada and Atlantic City casinos is explained,

<sup>13</sup>To make reasonable comparisons of operating income among class III Indian facilities and Nevada and Atlantic City casinos, we included only those facilities reported as generating \$72 million or more in gaming revenues. The highest category included in the Nevada Gaming Abstract was gaming revenues of \$72 million and more, and all Atlantic City casinos generated more than \$72 million in gaming revenues.

---

in part, by the different operational environments of the facilities. Specifically, the operating income shown in table 5 for Nevada and Atlantic City casinos was reduced by expenses that were not generally incurred at these Indian facilities, such as state gaming taxes and other state requirements. For example, Atlantic City casinos are subject to an 8-percent tax on their gaming revenues. Further, these Nevada and Atlantic City casinos have more competition in close proximity than the 14 class III Indian facilities.

Another possible explanation for the differences in operating income was the nature of the tribes' relationships with their gaming facilities: Some tribes provided goods and services to the gaming facilities free of charge or at a low cost, which would have reduced their operating expenses.

---

## Federal Tax Treatment of Indians and Indian Tribes

---

### Overview

Although no statutory provision exempts Indian tribes from income taxation, IRS has concluded that federally recognized Indian tribes and their federally chartered corporations are not subject to federal income tax.<sup>14</sup> With respect to tribes, IRS based its conclusion on the determination that the tribes are political agencies that Congress did not intend to include within the meaning of the income tax provisions of the Internal Revenue Code. Indian tribes are not, however, tax-exempt organizations within the meaning of the provisions of the Code that exempt certain categories of organizations from income tax. With respect to the tribes' federally chartered corporations, IRS takes the view that no taxable entity separate from the tribes exists. IRS has also found that individual tribe members are U.S. citizens and are subject to federal income tax unless a specific exemption can be found in a treaty or statute.

IRS has found, however, that Indian tribal governments have no inherent exemption from federal excise taxes and, absent a specific statutory exemption, must purchase taxable articles or services on a tax-paid basis and must pay tax on their sale or use of taxable articles or services.

---

<sup>14</sup>Four revenue rulings address the federal income tax status of Indian tribal governments. See Rev. Rul. 67-284, 1967-2 C.B. 55; Rev. Rul. 81-295, 1981-2 C.B. 15; Rev. Rul. 94-16, 1994-1 C.B. 19; and Rev. Rul. 94-65, 1994-2 C.B. 14. A revenue ruling is an official interpretation by IRS that indicates its official policy on an issue or a line of reasoning.

Section 7871 of the Code, enacted in 1982, provides an exemption from certain excise taxes. In addition, Indian tribes that are employers must pay federal employment taxes on wages paid to employees.

A provision included as part of the House-passed Seven-Year Balanced Budget Reconciliation Act of 1995 would have made the tribes subject, under section 511(a) of the Code, to the unrelated business income tax on revenues from class II and class III gaming.<sup>15</sup> The unrelated business income tax currently applies to the income from the business activities of tax-exempt organizations that are not substantially related to the organizations' exempt function. The proposed tax would have been the first explicit federal income tax applied to an Indian tribe.<sup>16</sup> A memorandum prepared by the Congressional Research Service, dated October 10, 1995, concluded that the proposal did not seem to be invalid on any constitutional ground.<sup>17</sup>

## Historical Perspective

Before enactment of the Indian Reorganization Act of 1934 (IRA), congressional policy had been directed toward the assimilation of Indian tribes and the allotment of Indian lands to individual tribe members.<sup>18</sup> IRA ended the practice of allotment as it applied to tribally owned lands.<sup>19</sup> The

<sup>15</sup>H.R. 2491, 104th Cong., section 13631 (1995). The provision was dropped in conference; see H.R. Conf. Rep. No. 104-350 at 141 Cong. Rec. H12841, 12874.

<sup>16</sup>See, however, section 7871(a)(5) of the Code, which provides that an Indian tribal government shall be treated as a state for purposes of section 511(a)(2)(B), which applies the unrelated business income tax to colleges and universities owned or operated by state governments.

<sup>17</sup>The memorandum also concluded that taxing tribal gaming proceeds, despite the fact that state lottery revenues are untaxed, does not implicate any constitutional right that the tribes have to being treated on a par with states. The memorandum noted that because of the long history of treaty-making with Indian tribes, there is the possibility that an individual tribe may be able to invoke particular provisions of a treaty or statute and convince the federal courts that these provisions insulated the tribe against such a tax. The memorandum cautioned that a court looking at such an issue would not be likely to set aside general tax legislation as unconstitutional, but would consider whether abrogating the particular treaty implicated a vested property interest to which there is a right to compensation. The memorandum concluded, however, that the prospect of such a treaty provision seems very unlikely.

In legal memoranda commissioned by the Mashantucket Pequot Tribe, a contrary view has been expressed. These include a memorandum prepared by Douglas Endreson, Sonosky, Chambers, Sachse & Endreson, Oct. 26, 1995, 95 TNT 233-40. The memorandum concludes that the proposed tax would be unconstitutional. The memorandum also maintains that the tax would abrogate certain treaty-protected rights to self-government.

<sup>18</sup>Act of June 18, 1934, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. 461 et seq.).

<sup>19</sup>David Getches, Charles F. Wilkinson, and Robert A. Williams, Federal Indian Law (St. Paul, Minn.: West Publishing Company, 1993), p. 216.

---

act was designed to further tribal self-government by providing for tribal organization.

IRA section 16 provided that any tribe may adopt a constitution and bylaws, and it established a procedure for ratification by tribal members and approval by the Secretary of the Interior.<sup>20</sup> Section 16 also provided that the constitution adopted by the tribe vested certain rights and powers in the tribe, including the right to prevent the sale and disposition of tribal lands and the right to negotiate with federal, state, and local governments.

Section 17 provided for the formation of a business corporation and established procedures for petition and ratification.<sup>21</sup> Thus, IRA allowed for a dual mechanism by which the governmental affairs of an Indian tribe are conducted under a constitution and bylaws adopted under IRA section 16 and the commercial matters are handled by a business corporation organized under section 17.

IRA section 16 provided that “In addition to all powers vested in any Indian tribe by existing law, the constitution shall also vest in such tribe or its tribal council [a list of powers].” An early opinion of the Solicitor for the Department of the Interior considered the issue of what powers are incorporated in the constitution and bylaws of an Indian tribe by this reference to “powers vested in any Indian tribe or tribal council.”<sup>22</sup> The opinion concluded that the vested powers are those powers of local self-government that have never been terminated by law or waived by treaty, including the power to: (1) adopt a form of government, create offices, and prescribe the duties thereof; (2) regulate the domestic relations of tribal members; (3) levy dues, fees, or taxes upon tribal members; and (4) regulate the use and disposition of all property within the jurisdiction of the tribe.

The opinion noted that the list was based on general legislation and judicial decisions of general application and was subject to modification with respect to particular tribes, in light of particular powers granted or particular restrictions imposed by special legislation.

---

<sup>20</sup>25 U.S.C. 476 (1996).

<sup>21</sup>25 U.S.C. 477 (1996).

<sup>22</sup>Opinion dated Oct. 25, 1934, Decisions of the Department of the Interior, Vol. 55, p. 14, cited in GCM 26556.

---

In an early General Counsel Memorandum, IRS found that these conclusions were

“a striking indication on the part of Congress and the executive department of the Government charged with administering various Indian laws that Indian tribes as such have been recognized as political agencies and have never lost their inherent powers of limited sovereignty . . . [and that] an Indian tribe, as such, is not a taxable entity within the purview of the income tax provisions of the Internal Revenue Code.”<sup>23</sup>

This principle forms the basis for the IRS policy on the income tax status of Indian tribes, as set forth in the series of revenue rulings. IRS has determined, however, that although Indian tribes are governments, they are not political subdivisions of the United States, individual states, or territories for purposes of the Code provisions that apply special tax treatment to these governmental units. These include the state exemptions from excise taxes, the income tax exemption for interest on municipal bonds, and the deduction of charitable contributions to governmental units for estate tax purposes.<sup>24</sup> In 1982, Congress enacted the Indian Tribal Tax Status Act (Tribal Tax Act), treating tribal governments as states for a number of specified tax provisions, including provisions relating to tax-exempt bonds, charitable contribution deductions, and certain excise tax provisions.<sup>25</sup> The treatment is generally available in transactions in which tribes exercise essential governmental functions.

---

## Summary of Taxation of Indian Business Activities

The following sections outline the federal income tax treatment that applies to the various structures that generally can be used by tribes to carry out business activities. IGRA provides that unless a tribe elects to license individual owners, the tribe must have the sole proprietary interest and responsibility for the conduct of the gaming activity. Thus, gaming operations must generally be operated by an entity owned by the tribe, or as an arm of the tribe itself. Payments to tribe members and the application of other federal taxes are also discussed.

---

<sup>23</sup>See GCM 26556 (Dec. 20, 1949). In GCM 38853 (May 17, 1982), the Chief Counsel’s office noted that “historically, the IRS has taken the position that the income tax statutes do not purport to tax the political entity embodied in the concept of an Indian tribe and no attempt has been made to tax the tribe with respect to tribal income,” and indicated that the position of the office was that “in the absence of express legislation, no modification should be made to the taxability of Indian tribes on tribal income.”

<sup>24</sup>See Rev. Rul. 74-179, 1974-1 C.B. 279; Rev. Rul. 68-231, 1968-1 C.B. 48; and Rev. Rul. 58-610, 1958-2 C.B. 815. IRS determined that because Indian tribes do not derive their powers of self-government from the United States or the states, they are not political subdivisions within the meaning of these provisions.

<sup>25</sup>Pub. L. No. 97-473, 96 Stat. 2607 (codified at I.R.C. section 7871).

---

**Federally Recognized Indian Tribes Are Exempt From Federal Income Taxation.** According to IRS, federally recognized Indian tribes are not subject to federal income taxation.<sup>26</sup> Rev. Rul. 67-284 states that “income tax statutes do not tax Indian tribes. The tribe is not a taxable entity.” Any income earned by the tribe is not subject to income tax, regardless of whether the business activity is inside or outside of Indian-owned lands.

The Senate Finance Committee Report on legislation that later became the Tribal Tax Act recognized IRS’ position that sections 1 and 11 of the Internal Revenue Code do not reach Indian tribes as set forth in Rev. Rul. 67-284 and stated that the proposed legislation did not amend this treatment.<sup>27</sup>

**Federally Chartered Tribal Corporations Are Not Subject to Federal Income Taxation.** IRS has determined that federally chartered tribal corporations organized under IRA section 17 are not subject to federal income taxation, regardless of where the income is earned. In Rev. Rul. 81-295, IRS found that a federally chartered Indian tribal corporation has the same tax status as the tribe and is not taxable. The revenue ruling described a particular federally chartered Indian tribe. The tribe was formally organized under a constitution and bylaws pursuant to IRA section 16. In addition, at the time of formal organization, the tribal members had ratified a corporate charter as permitted by IRA section 17. The Secretary of the Interior had approved the tribe’s constitution and bylaws and the corporation’s charter. This principle was affirmed in Rev. Rul. 94-16.

Further, in Rev. Rul. 94-65, IRS concluded that a tribal corporation organized under the Oklahoma Indian Welfare Act section 3 is not subject to federal income taxation on the income earned in the conduct of commercial business in or outside of Indian-owned lands.<sup>28</sup>

**State-chartered Tribal Corporations Are Subject to Federal Income Tax.** IRS has determined that a corporation organized by an Indian tribe under state law is subject to federal income tax regardless of the location of the activities that generate the income. In Rev. Rul. 94-16, IRS reasoned that a corporation organized by an Indian tribe under state law is

---

<sup>26</sup>BIA publishes a list of federally acknowledged Indian tribes in the Federal Register. See 25 C.F.R. section 83.5(a) (1996 ed.).

<sup>27</sup>S. Rept. 97-646, at 8 (1982) reprinted in 1982 U.S.C.C.A.N. 4580, 4586.

<sup>28</sup>25 U.S.C. 503.

---

not the same as an Indian tribal corporation organized under IRA section 17 and does not share the same tax status as the tribe for federal income tax purposes.

**Wholly-owned Tribal Law Corporations Generally Have Not Been Subject to Administrative Attempts to Impose Income Taxes.**

Although IRS has addressed the tax status of federally recognized Indian tribes and federally chartered corporations, it has not issued a published ruling on the tax status of wholly-owned corporations chartered under tribal law. Many Indian tribal governments have organized wholly-owned tribal corporations to conduct business operations rather than obtain a state or federal charter. Although IRS has not issued published rulings, IRS officials are not aware of any administrative attempt to date to impose federal income taxes on wholly-owned tribal corporations.

**Payment of Other Federal Taxes.** IRS has determined that Indian tribal governments have no inherent exemption from excise taxes, but section 7871 of the Code provides them with a limited exemption. In Rev. Rul. 94-82, 1994-2 C.B. 412, IRS cited Confederated Tribes of the Warm Springs Reservation v. Kurtz, in which the court found that an Indian tribe did not fit within the excise tax exemption for “any State, any political subdivision of a State, or the District of Columbia.”<sup>29</sup> The court reasoned that since the tribe did not derive authority from the state, the state government exemption is not applicable to the tribe.

Section 7871 specifically provides that a tribal government is to be treated as a state for purposes of certain excise taxes if the transaction involves the exercise of an essential governmental function. Consequently, Indian tribes performing essential governmental functions share the same excise tax exemptions as states for many excise taxes. However, both Indian tribes and states are subject to wagering excise taxes. The states are, however, exempt from excise taxes on lotteries.

**Payments to Tribal Members Are Taxable.** No provision of the Internal Revenue Code exempts individual Indians from the payment of federal income tax; thus, exemptions must be based on a treaty or an act of Congress.<sup>30</sup> In some cases, a tribal member may receive general welfare

---

<sup>29</sup>691 F.2d 878 (9th Cir. 1982).

<sup>30</sup>Squire v. Capoeman, 351 U.S. 1 (1956). Subsequent federal appeals court cases have interpreted Squire v. Capoeman to mean that a tax exemption must be based on some particular language in a treaty or statute and that an exemption may not be based on policy alone. United States v. Anderson, 625 F.2d 910, 913, cert. denied. 450 U.S. 920 (1980).

---

payments from the tribe. Although amounts paid for general welfare may not be taxable, payments made pro rata to all tribal members are evidence that the payments are not based on need and, thus, probably will not qualify for the general welfare exclusion.<sup>31</sup>

The Indian Gaming Regulatory Act of 1988 provided that the net revenues from any tribal gaming are not to be used for purposes other than to (1) fund tribal government operations or programs, (2) provide for the general welfare of the Indian tribe and its members, (3) promote tribal economic development, (4) donate to charitable organizations, or (5) help fund operations of local government agencies.<sup>32</sup>

IGRA also provided that net revenues from gaming may be used to make per capita payments to members of the Indian tribe, but only if the tribe has prepared a revenue allocation plan to allocate revenues to uses authorized by IGRA. The plan must be approved by the Secretary of the Interior as adequate, particularly with respect to the funding of tribal government operations or programs and promoting tribal economic development. IGRA also required that the interests of minors and other legally incompetent persons entitled to receive any of the payments be protected and preserved. Because the payments are per capita distributions of gaming proceeds, they are generally subject to taxation when distributed. Additionally, IGRA itself provides that the per capita payments are subject to federal taxation, and the act requires that tribes notify their members of the tax liability when payments are made.

Section 3402(r) of the Internal Revenue Code provides that every person making a payment to a member of an Indian tribe from the net revenues from class II or class III gaming activity must withhold income taxes from the payment. The withholding is capped at 31 percent. Tribal governments must report the total amount of taxable per capita payments made to each tribal member on Form 1099-Misc. Tribal governments are to report any federal income tax withheld on per capita payments on Form 945, Annual Return of Withheld Federal Income Tax, and make any necessary federal tax deposits.

---

<sup>31</sup>IRS policy has long provided for exclusion of public assistance payments or social welfare payments from income. These payments may include food stamps, housing assistance benefits, and Medicare benefits.

<sup>32</sup>25 U.S.C. 2710(b)(2) (1996).

---

## Agency Comments

We provided a draft of this report to the Internal Revenue Service, Department of the Interior, and National Indian Gaming Commission. IRS' Office of Chief Counsel generally agreed with our presentation of the federal tax treatment of Indian tribes and their members and provided some technical comments. We have incorporated those comments where appropriate. Interior's Director of Audit and Evaluation provided a technical comment regarding the authority to approve class III gaming and tribal-state compacts, which we incorporated.

NIGC provided a number of technical comments that we incorporated as appropriate. Two of the comments warrant further discussion. First, the NIGC Acting Chair indicated that our number of tribes and facilities did not agree with NIGC's records. In an April 18, 1997, meeting with NIGC officials, we discussed the number of tribes and facilities and made changes to the report where appropriate. However, our final figures and list of facilities are not the same as NIGC's because of differences in the methodology used to identify and count facilities. NIGC officials acknowledged the differences in methodology and agreed with our final figures and list of facilities.

Second, the NIGC Acting Chair also indicated that we should not include state gaming taxes and other payments to the state as examples of expenses incurred by Atlantic City and Nevada casinos but not by Indian gaming facilities. She stated that some tribal-state compacts may include payments from either the tribe or the gaming facility to states. We told NIGC officials that information provided by industry specialists and in the financial statements of the gaming facilities included in our analysis of operating income showed no payments of taxes or other fees to the state. We also explained to NIGC officials that this information is not meant to indicate that tribes or their gaming facilities pay no taxes or fees to states but to explain some of the differences in the operating income between Indian gaming facilities and Atlantic City and Nevada casinos. NIGC officials accepted this explanation.

Interior's Assistant Secretary—Indian Affairs provided additional written comments. The Department agreed with our presentation of the federal tax treatment of Indian tribes and their members. It suggested that our report should also compare revenues of Indian gaming facilities with revenues of the various states lotteries. The letter stated that it is Interior's position that tribes are governments, like states, and that it is therefore more appropriate to compare the gaming revenues of governmental entities rather than to compare gaming revenues of Indian tribes with those of privately owned casinos. We compared revenues from class III

---

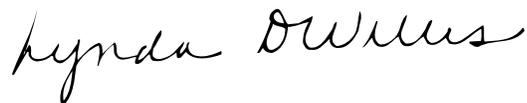
gaming (primarily table games and slot machines) with revenues from like gaming activities in Atlantic City and Nevada casinos. We did not compare Indian gaming revenues with state lottery revenues because Indian gaming does not include lotteries; therefore, such a comparison would be inappropriate.

---

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Ranking Minority Member, House Ways and Means Committee; the Senate Finance Committee Chairman and Ranking Minority Member; the Commissioner of Internal Revenue; the Secretary of the Interior; the Chair of the National Indian Gaming Commission; and to other interested parties. We will also make copies available to others upon request.

Major contributors to this report are listed in appendix III. If you have any questions or we can be of further assistance, please call me at (202) 512-9110.

Sincerely yours,



Lynda D. Willis  
Director, Tax Policy  
and Administration Issues

---

---

---

# Contents

---

Letter		1
Appendix I Objectives, Scope, and Methodology		32
Appendix II Tribes and Known Gaming Operations as of December 31, 1996		38
Appendix III Major Contributors to This Report		46
Glossary		47
Tables		
	Table 1: 1995 Revenues, Costs and Expenses, and Net Income for Class II and III Indian Gaming Facilities	9
	Table 2: Gaming Revenue Market Shares, 1995	15
	Table 3: Casino Gaming Revenue Shares, 1995	16
	Table 4: Reported Indian, Nevada, and Atlantic City Gaming Revenues, 1995	17
	Table 5: Reported Operating Income of Facilities and Casinos With Gaming Revenues of \$72 Million and More, 1995	19
	Table I.1: 1995 Financial Statement Filing Status of Facilities as of December 31, 1996	33
Figures		
	Figure 1: Indian Gaming Revenues, 1985-95	6
	Figure 2: Distribution of Indian Gaming Facilities	8
	Figure 3: Distribution of Class II Facilities' Gaming Revenues	10
	Figure 4: Distribution of Class III Facilities' Gaming Revenues	11
	Figure 5: Costs and Expenses and Net Income Margins	12
	Figure 6: Facilities and Net Income Margins	13
	Figure 7: Distribution of Funds Reportedly Transferred to 106 Tribes	14

---

**Contents**

---

Figure 8: Reported Class III Indian Facilities and Nevada Casinos With Gaming Revenues of \$72 Million and More	18
Figure I.1: Flow of Transfers From the Gaming Facility to the Tribe	35

---

**Abbreviations**

BIA	Bureau of Indian Affairs
IGRA	Indian Gaming Regulatory Act of 1988
IRA	Indian Reorganization Act of 1934
IRS	Internal Revenue Service
NIGC	National Indian Gaming Commission

---

# Objectives, Scope, and Methodology

---

## Objectives

Our objectives in this report were to provide (1) an updated profile of the Indian gaming industry, (2) information on the amount of transfers to the tribes from their gaming facilities, (3) a comparison of Indian gaming revenues with the revenues generated by other legalized gaming activities, and (4) a summary of the federal tax treatment of Indian tribes and tribe members.

---

## Scope and Methodology

---

### Profile of the Indian Gaming Industry

To determine the number of tribes with gaming facilities, we reviewed documents provided by NIGC identifying all tribes with gaming operations as of December 31, 1996. This information included only class II and class III gaming facilities. Information on the number of tribes with class I facilities was not readily available because class I gaming consists of social gaming for nominal prizes or ceremonial gaming, which is regulated solely by the tribes.

To develop a comprehensive list of tribes and gaming facilities, NIGC contacted all tribes except for those in Alaska, where it contacted only the tribes that were known to be attempting to open gaming facilities. According to NIGC, most of the 226 tribes in Alaska are not operating gaming facilities, primarily because of the remoteness and small size of the tribes' membership.<sup>1</sup> (A list of tribes and their known gaming facilities as of December 31, 1996, appears in app. II.)

IGRA categorizes gaming activities as class II or class III. For purposes of our analysis, however, we categorized facilities based on whether they had approved tribal ordinances and tribal-state compacts. We categorized gaming facilities without compacts as class II facilities, even though they may operate class III games. We treated gaming facilities with class III games and compacts in place, per BIA listing of compacts as of December 14, 1995, as class III facilities. NIGC told us that in several states, tribes and states may no longer have valid compacts in place.

To perform our analyses on revenues, costs and expenses, and net income, for example, we used data contained in 1995 financial statements that

---

<sup>1</sup>Additionally, it is unclear whether certain lands set aside for Alaska natives under the Alaska Native Claims Settlement Act meet the IGRA definition of Indian lands on which gaming may be conducted. (See 43 U.S.C. 1601 et seq.)

were submitted to NIGC as of November 22, 1996.<sup>2</sup> This was the date on which we ended our data gathering to begin our analyses. For this time frame, NIGC had financial statements from 126 tribes representing 178 facilities. The financial statements of 174 of these facilities were independently audited, and the majority received unqualified opinions.<sup>3</sup> We also verified our listings of financial statements received with NIGC officials to ensure that we had received all of them. (See app. II, footnote a.)

The sample of facilities included in our report consists of the 178 gaming facilities represented by these financial statements. The sample is not representative of the universe of all Indian gaming facilities. Table I.1 represents the 1995 financial statement submission status of all gaming facilities existing as of December 31, 1996, according to information provided by NIGC.<sup>4</sup> We verified this information with NIGC officials to clarify questions and inconsistencies. We do not know the characteristics of those gaming facilities for which we did not analyze the financial statements. We did not determine why some tribes did not submit financial statements beyond what is indicated in table I.1 because such an analysis, although important for compliance purposes, was outside the scope of this report.

**Table I.1: 1995 Financial Statement Filing Status of Facilities as of December 31, 1996**

<b>Filing status</b>	<b>Number of facilities</b>
Filed and included in our analysis	178
Filed but not included in our analysis because financial statements were incomplete or submitted after the completion of our data gathering	30
Did not file or received filing extensions	44
Not required to file because they were not operating for one year as of 1995 or were opened in 1996	36
Included in our analysis but closed by December 31, 1996	(7)
<b>Total known gaming facilities as of December 31, 1996</b>	<b>281</b>

Source: GAO analysis of Indian gaming operations and financial statement submissions, based on information from and discussions with NIGC officials.

<sup>2</sup>The financial statements we analyzed had different fiscal year ending dates, but we considered a financial statement to be a 1995 statement if its fiscal year ended in 1995.

<sup>3</sup>An unqualified opinion on the financial statements generally means that the auditor concludes the financial statements and accompanying notes present fairly, in all material respects, the assets, liabilities, and net position of the entity at the end of the period; and the net costs, changes in net position, and cash flows for the period then ended are in conformity with the entity's basis of accounting or generally accepted accounting principles.

<sup>4</sup>NIGC updates the status of gaming facilities and financial statement submissions quarterly. The quarter ending on December 31, 1996, was the closest quarter to November 22, 1996, the date we completed our data collection.

---

For those facilities included in our analyses, we extracted information that allowed us to determine gaming revenues, total revenues, costs and expenses, operating income, and net income. We used Audit and Accounting Guide: Audits of Casinos, published by the American Institute of Certified Public Accountants, and spoke with industry experts for guidance in deciding which data to extract from the financial statements and what analyses to perform on these data. (See the glossary for the accounting terms we used throughout this report.)

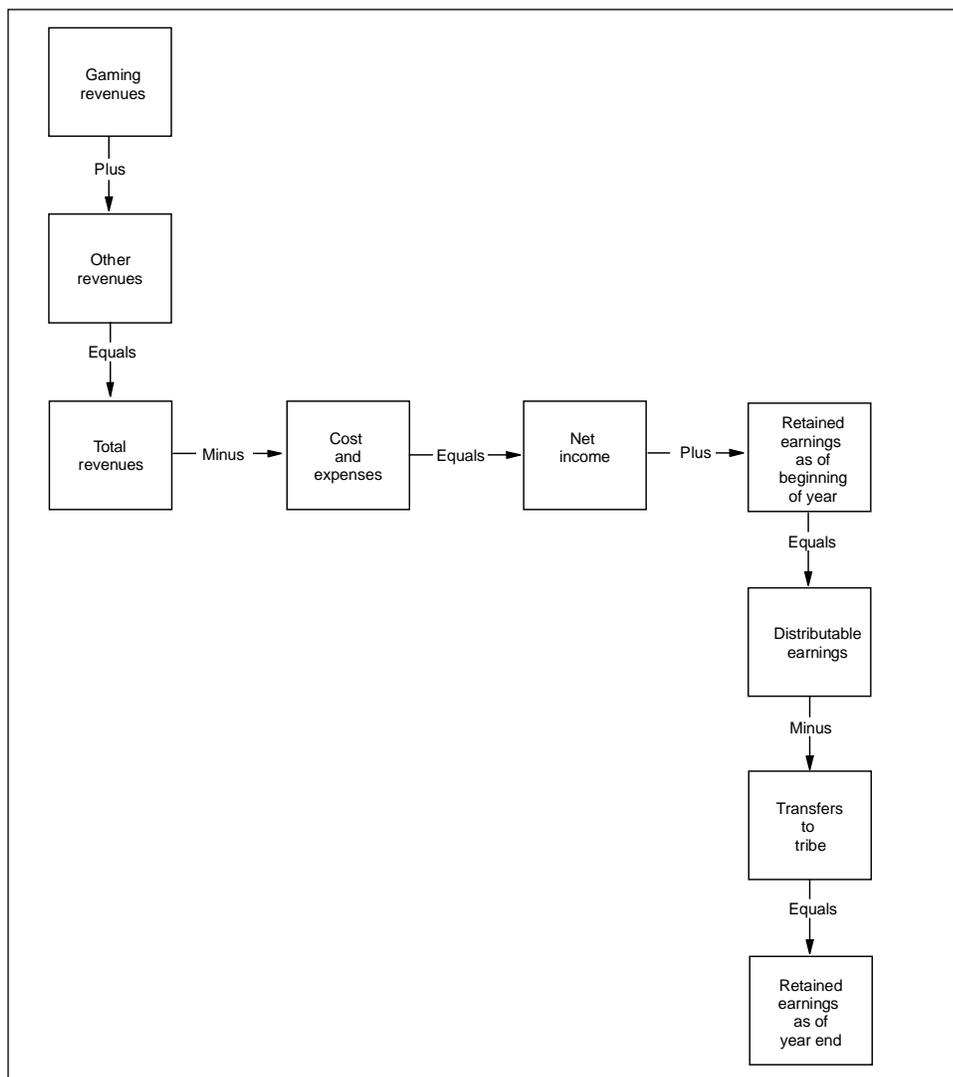
Our analyses do not include data from the balance sheet or statement of cash flows, such as assets, liabilities, equity, or debt payments, because this information was not reported consistently by the different facilities.

---

## Transfers to the Tribes

To determine the amount of transfers to the tribes, we analyzed information contained in the financial statements. The transfers as described in this report represent the amounts in the financial statements allocated to the tribes. IGRA provides that net revenues from tribal gaming must be devoted to certain uses, including funding tribal government operations. Net revenues is defined as gross gaming revenues minus prizes and gaming-related operating expenses, not including management fees. In figure I.1, we depict, in general, how the transfers flow from the gaming facility to the tribe as indicated in the financial statements.

**Figure I.1: Flow of Transfers From the Gaming Facility to the Tribe**



Note: This flowchart has been simplified to represent, in general, the revenue flow across all financial statements. Other revenues include, for example, revenues from food, beverages, hotel rooms, and interest.

Source: GAO analysis of 1995 financial statements.

As noted in the Background section of this report, IGRA limits how these transfers can be used. The transfers as described in this report represent the amounts in the financial statements allocated to the “tribes.” The

---

amounts could have been received by tribal government or tribal members, but we were not able to determine this because the financial statements did not indicate how the transfers were used or who received them. In addition, to determine the economic impact of gaming on the tribes, several factors would need to be considered, such as poverty levels and other revenues generated by the tribes; we did not address these factors because they were beyond the scope of this report. We obtained information on the amount of items, such as taxes and fees, rent and other charges, and cost reimbursements, from the financial statements to the extent such amounts were reported.

---

## Comparison of Indian and Non-Indian Gaming Revenues

To compare Indian gaming revenues with the gaming revenues of other legalized gaming, we used data reported in *International Gaming and Wagering Business* and financial statement data submitted to the Nevada and Atlantic City gaming commissions. We obtained the financial data on Nevada casinos from *Nevada Gaming Abstract*, a report prepared by the Nevada State Gaming Control Board for fiscal year data as of June 30, 1995. The information presented in the Abstract comes from unaudited standard financial statements that licensees whose gaming revenues are \$1 million or more are required to file. We obtained the Atlantic City financial data from unaudited standard financial statements that all New Jersey casinos are required to file and from financial analyses prepared by the New Jersey Casino Control Commission as of June 30, 1995. We did not independently verify the data included in these reports.

We used data published in *International Gaming and Wagering Business* to determine the gaming revenue shares of legalized gaming as a whole and also the casino segment in particular. The legalized gaming categories we included are those used in this publication. We substituted the amounts of Indian gaming revenues for the amounts used in this publication only for consistency with our analyses in the rest of our report. The amounts published for Indian gaming, however, were similar to the amounts we determined from the financial statements.

We used the financial data of Nevada and Atlantic City casinos only to compare class III facilities. Class III facilities relied primarily on casino games and slot machines, and this was also the case for Nevada and Atlantic City casinos. We included only facilities with gaming revenues of \$1 million and more because the Nevada financial data were aggregated and included only facilities with these gaming revenues. To make valid comparisons of revenues among the Indian facilities and casinos, we

---

subtracted the amount of promotional allowances (free food, hotel rooms, and so on given to customers as incentives) from “other revenues” for those facilities and casinos that reported such amounts as “revenues.”

We used operating income to compare the results of these operations because operating income is a common measure used by industry experts to analyze and compare the profitability of businesses. It discounts the effects of capital structure and other nonoperating incomes and expenses that are not directly related to the performance of business operations.

---

**Summary of Legal Issues  
Pertaining to the Taxation  
of Indian Tribes**

To describe the legal issues regarding the taxation of Indian gaming revenues, we reviewed relevant sections of the Internal Revenue Code and the IRS and Department of the Treasury rulings and regulations pertaining to the taxation of Indian tribes. We also interviewed officials from Treasury, IRS, and BIA.

# Tribes and Known Gaming Operations as of December 31, 1996<sup>a</sup>

State	Tribe	Name of operation	
Alabama	Poarch Band of Creek Indians	Creek Bingo Palace*	
Alaska	Klawock Cooperative Association	Klawock Cooperative Association (Gaming Division)*	
	Metlakatla Indian Community	Metlactla Indian Community Bingo	
Arizona	Ak Chin Indian Community	Harrah's Ak-Chin Casino*	
	Cocopah Indian Tribe	Cocopah Bingo and Casino*	
	Colorado River Indian Tribes	Blue Water Casino*	
	Fort McDowell Mohave-Apache Indian Community	Fort McDowell Gaming Center*	
	Fort Mojave Indian Tribe	Spirit Mountain Casino*	
	Gila River Indian Community		Lone Butte Casino*
			Wild Horse Casino*
	Kaibab Band of Paiute Indians	Pipe Spring Resort & Casino**	
	Pascua Yaqui Tribe of Arizona	Casino of the Sun*	
	Quechan Indian Tribe	Quechan Bingo/Casino	
	San Carlos Apache Tribe	Apache Gold Casino*	
	Tohono O'odham Nation	Tohono O'odham Gaming Authority-Desert Diamond Casino*	
	Tonto Apache Tribe	Tonto Apache Mazatzal Casino*	
	White Mountain Apache Tribe	Hon-dah Casino*	
	Yavapai Apache Tribe	Cliff Castle Casino*	
Yavapai-Prescott Indian Tribe		Yavapai-Prescott Class II Gaming*	
		Yavapai-Prescott Class III Gaming*	
California	Agua Caliente Band of Cahuilla Indians	Spa Casino*	
	Auberry Big Sandy Rancheria	Mono Wind Casino	
	Barona Band of Mission Indians	Barona Casino*	
	Big Pine Paiute Tribe of the Owens Valley	Sierra Springs Casino	
	Big Valley Rancheria of Pomo Indians	Konocti Vista Casino and Bingo*	
	Bishop Paiute Tribe	Paiute Palace Casino*	
	Bridgeport Indian Reservation	Kiba Casino**	
	Cabazon Band of Mission Indians		Cabazon Simulcast Wagering Corporation*
			Fantasy Springs Casino*
	Cahto Tribe of the Laytonville Rancheria	Cahto Casino	
	Cahuilla Band of Mission Indians	Cahuilla Creek Restaurant and Casino	
	Chemehuevi Indian Tribe	Havasu Landing Resort	
	Chicken Ranch Rancheria	Chicken Ranch Bingo*	
	Coast Indian Community of the Resighini Rancheria	Coast Indian Gaming Facility	
	Colusa Rancheria	Colusa Casino & Bingo Enterprise Fund*	
	Coyote Valley Band of Pomo Indians	Shodakai Coyote Valley Casino	
	Elk Valley Rancheria	Elk Valley Casino	

(continued)

**Appendix II  
Tribes and Known Gaming Operations as of  
December 31, 1996\***

<b>State</b>	<b>Tribe</b>	<b>Name of operation</b>
	Hoopa Valley Tribe	Lucky Bear Casino
	Hopland Reservation	Hopland Casino
	Jackson Rancheria Band of Miwuk Indians	Jackson Indian Bingo and Casino*
	Lake Miwok Indian Nation of the Middletown Rancheria	Twin Pine Casino*
	Mooretown Rancheria	Mooretown Rancheria Casino
	Morongo Band of Mission Indians	Casino Morongo*
	Pit River Tribe	Pit River Casino
	Redding Rancheria Tribe	Win-River Casino*
	Robinson Rancheria of Pomo Indians	Robinson Rancheria Bingo and Casino*
	Rumsey Indian Rancheria	Cache Creek Indian Bingo and Casino*
	San Manuel Band of Mission Indians	San Manuel Mission Indian Casino
	Santa Rosa Rancheria	The Palace Bingo*
	Santa Ynez Band of Mission Indians	Santa Ynez Indian Casino*
	Sherwood Valley Rancheria	Black Hart Casino
	Smith River Rancheria	Smith River Lucky 7 Casino
	Soboba Band of Mission Indians	Soboba Casino
	Susanville Indian Rancheria	Northern Lights Casino
	Sycuan Band of Mission Indians	Sycuan Gaming Center
	Table Mountain Rancheria	Table Mountain Rancheria Casino and Bingo*
	Temecula Band of Luiseno Mission Indians	Pechanga Entertainment Center*
	Trinidad Rancheria	Cher-Ae Heights Bingo and Casino*
	Tule River Tribe of the Tule River Indian Reservation	Eagle Mountain Casino
	Twenty Nine Palms Band of Mission Indians	Spotlight 29 Casino*
	Tyme Maidu Tribe of the Berry Creek Rancheria	Berry Creek Rancheria Gaming
	Viejas Band of Mission Indians	Viejas Casino and Turf Club
Colorado	Southern Ute Indian Tribe	Sky Ute Lodge and Casino*
	Ute Mountain Ute Tribe	Ute Mountain Casino*
Connecticut	Mashantucket Pequot Tribe	Foxwoods Resort Casino*
	Mohegan Tribe of Indians	Mohegan Sun Casino
Florida	Miccosukee Tribe of Indians of Florida	Miccosukee Indian Bingo*
	Seminole Tribe of Florida	Brighton Seminole Bingo
		Hollywood Seminole Gaming*
		Seminole Bingo of Tampa*
		Seminole Bingo Palace*
		Seminole Gaming Palace - Immokalee*
Idaho	Coeur d'Alene Tribe	Coeur d'Alene Tribal Bingo/Casino*
	Kootenai Tribe of Idaho	Kootenai River Inn and Casino*
	Nez Perce Tribe	Clear River Casino
		Its-Ye-Ye Bingo

(continued)

**Appendix II  
Tribes and Known Gaming Operations as of  
December 31, 1996\***

<b>State</b>	<b>Tribe</b>	<b>Name of operation</b>
	Shoshone-Bannock Tribes	Bannock Peak Gaming Enterprise Fund* Oregon Trail Outpost
Iowa	Omaha Tribe of Nebraska	Casino Omaha*
	Sac & Fox Tribe of Mississippi in Iowa	Meskwaki Bingo and Casino*
	Winnebago Tribe of Nebraska	WinnaVegas Casino*
Kansas	Iowa Tribe of Kansas and Nebraska	Bingo Party Games*
	Kickapoo Nation in Kansas	Golden Eagle Casino
	Prairie Band Potawatomi	Prairie Band of Potawatomi Indian Gaming Trust*
Louisiana	Chitimacha Tribe of Louisiana	Cypress Bayou Casino*
	Coushatta Tribe of Louisiana	Grand Casino Coushatta*
	Tunica-Biloxi Indian Tribe of Louisiana	Grand Casino Avoyelles*
Michigan	Bay Mills Indian Community	Bay Mills Casino* Kings Club Casino*
	Grand Traverse Band of Ottawa/Chippewa Indians	Leelanau Sands Casino* Super Gaming Palace* Turtle Creek Casino
	Hannahville Indian Community	Chip-in Casino/Motel*
	Keweenaw Bay Indian Community	Big Bucks Casino Ojibwa Casino Resort* Ojibwa Casino Resort-Marquette Senior's Bingo* Youth Bingo*
	Lac Vieux Desert Band of Lake Superior Chippewa Indians	Lac Vieux Desert Casino*
	Saginaw Chippewa Indian Tribe	Soaring Eagle Casino*
	Sault Ste. Marie Tribe of Chippewa Indians	Kewadin Casino-Christmas* Kewadin Casino-Hessel* Kewadin Casino-Manistique* Kewadin Casino-St. Ignace* Kewadin Casino-Sault Ste. Marie* Midjim Convenience Store Pulltabs I Midjim Convenience Store Pulltabs II Vegas Kewadin Bingo
Minnesota	Bois Forte Band of Chippewas	Fortune Bay Casino*
	Fond du Lac Reservation Business Committee	Black Bear Casino* Fond-du-Luth Casino*
	Grand Portage Band of Chippewa Indians	Grand Portage Casino*
	Leech Lake Band of Chippewa Indians	Che-We Casino

(continued)

**Appendix II  
Tribes and Known Gaming Operations as of  
December 31, 1996\***

<b>State</b>	<b>Tribe</b>	<b>Name of operation</b>
		Leech Lake Palace Bingo*
		Northern Lights Gaming Emporium*
	Lower Sioux Indian Community	Jackpot Junction Casino*
	Mille Lacs Band of Chippewa Indians	Grand Casino Hinckley*
		Grand Casino Mille Lacs*
	Prairie Island Indian Community	Treasure Island Casino and Bingo*
	Red Lake Band of Chippewa Indians	Lake of the Woods Casino*
		Red Lake Casino*
		River Road Casino*
	Shakopee Mdewakanton Sioux Community	Little Six Bingo*
		Mystic Lake*
	Upper Sioux Community	Firefly Creek Casino*
	White Earth Band of Chippewa Indians	Golden Eagle Bingo
		Shooting Star Casino*
Mississippi	Mississippi Band of Choctaw Indians	Silver Star Hotel and Casino*
Montana	Assiniboine and Sioux Tribes of the Fort Peck Reservation	Silverwolf Casino*
	Blackfeet Tribe of Indians	Blackfeet Bingo
	Chippewa Cree Tribe of the Rocky Boy's Reservation	4 C's Cafe & Casino
		Chippewa PowWow Bingo
	Crow Indian Tribe	Little Bighorn Casino*
	Northern Cheyenne Tribe	Northern Cheyenne Social Club
Nebraska	Santee Sioux Tribe of Nebraska	Ohiya Casino
Nevada	Fort Mojave Indian Tribe	Avi Casino Enterprise, Inc.
	Las Vegas Paiute Tribe	Las Vegas Paiute Resort
	Moapa Band of Paiutes	Moapa Tribal Enterprises I
		Moapa Tribal Enterprises II
New Mexico	Jicarilla Apache Tribe	Apache Nugget Casino
		Vigil Family Enterprises
	Mescalero Apache Tribe	Inn of the Mountain Gods**
	Pueblo of Acoma	Sky City Casino*
	Pueblo of Isleta	Isleta Gaming Palace*
	Pueblo of Pojoaque	Cities of Gold Casino*
		Cities of Gold Sports Bar
		Pueblo of Pojoaque Casino*
	Pueblo of Sandia	Casino Sandia*
	Pueblo of Santa Ana	Santa Ana Star Casino*
	Pueblo of Taos	Taos Slot Room
	Pueblo of Tesuque	Camel Rock Casino
	San Felipe Pueblo	San Felipe Casino Hollywood*

(continued)

**Appendix II  
Tribes and Known Gaming Operations as of  
December 31, 1996\***

<b>State</b>	<b>Tribe</b>	<b>Name of operation</b>	
	San Juan Pueblo	Ohkay Casino*	
New York	Oneida Nation of New York	Turning Stone Casino	
	Seneca Nation of Indians	Bingo Allegany*	
		Bingo Cattaraugus*	
	St. Regis Mohawk Tribe	Mohawk Bingo Palace*	
		Tribal Bingo**	
North Carolina	Eastern Band of Cherokee Indians	Tribal Bingo*	
		Tribal Casino*	
		TeePee Village Casino**	
North Dakota	Devils Lake Sioux Tribe	Spirit Lake Casinos	
	Sisseton-Wahpeton Sioux Tribe	Dakota Magic Casino & Resort	
	Standing Rock Sioux Tribe	Fort Yates Pow Wow Committee	
		Prairie Knights Casino*	
	Three Affiliated Tribes of the Fort Berthold Reservation	4 Bears Casino and Lodge*	
	Turtle Mountain Band of Chippewa Indians	Turtle Mountain Chippewa Big Casino*	
		Turtle Mountain Chippewa Mini Casino*	
Oklahoma	Absentee-Shawnee Tribe of Oklahoma	Thunderbird Entertainment Center	
	Apache Tribe of Oklahoma	Na-I-Sha Games	
	Cherokee Nation of Oklahoma	Cherokee Nation Outpost-Catoosa*	
		Cherokee Nation Outpost-Roland*	
		Cherokee Nation Outpost-West Siloam Springs*	
		Loyal Shawnee Bingo	
	Cheyenne and Arapaho Tribes of Oklahoma	Cheyenne and Arapaho Bingo-Clinton	
		Cheyenne and Arapaho Bingo-Watonga	
		Lucky Star Bingo*	
	Chickasaw Nation of Oklahoma	Ada Gaming Center*	
		Goldsby Gaming Center*	
		Sulphur Gaming Center	
		Thackerville Gaming Center*	
		Choctaw Nation of Oklahoma	Choctaw High Stakes Bingo-Arrowhead*
			Choctaw High Stakes Bingo-Durant*
			Choctaw High Stakes Bingo-Idabel*
			Choctaw High Stakes Bingo-Pocola*
	Citizen Band Potawatomi Indians of Oklahoma	Potawatomi Tribal Gaming*	
	Comanche Indian Tribe	Comanche Nation Games*	
	Delaware Tribe of Western Oklahoma	Delaware Tribal Games**	
Eastern Shawnee Tribe of Oklahoma	Eastern Shawnee Tribe of Oklahoma Bingo Operations*		
Iowa Tribe of Oklahoma	Bingo Enterprise Fund*		
Kaw Nation of Oklahoma	Kaw Bingo*		

(continued)

**Appendix II  
Tribes and Known Gaming Operations as of  
December 31, 1996\***

<b>State</b>	<b>Tribe</b>	<b>Name of operation</b>
	Kiowa Tribe of Oklahoma	Kiowa Bingo
	Muscogee (Creek) Nation	Bristow Indian Community Bingo*
		Checotah Muskogee Indian Community Bingo*
		Eufaula Indian Community Bingo*
		Muscogee Bingo*
		Okmulgee Bingo*
		Tulsa Bingo*
	Ponca Tribe of Oklahoma	Ponca Tribal Bingo
	Sac & Fox Nation of Oklahoma	Foxfire Bingo Casino, Inc.
	Seminole Nation of Oklahoma	Seminole Nation Bingo*
		Wewoka Trading Post Gaming Center*
	Seneca-Cayuga Tribe of Oklahoma	Seneca-Cayuga Bingo
	Thlopthlocco Tribal Town	Thlopthlocco Bingo
	United Keetoowah Band of Cherokee Indians	Keetoowah Bingo
Oregon	Confederated Tribes of the Grande Ronde Indian Community	Spirit Mountain Gaming, Inc.*
	Confederated Tribes of the Siletz Indians of Oregon	Chinook Winds*
	Confederated Tribes of the Umatilla Indian Reservation	Wildhorse Gaming Resort*
	Confederated Tribes of the Warm Springs Reservation of Oregon	Indian Head Gaming Center*
	Coquille Indian Tribe	The Mill Casino
	Cow Creek Band of Umpqua Indians	Gaming Operations*
South Dakota	Cheyenne River Sioux Tribe	Cheyenne River Sioux Tribe Bingo
	Crow Creek Sioux Tribe	Crow Creek Bingo Hall
		Lode Star Casino
	Flandreau Santee Sioux Tribe	Royal River Casino*
	Lower Brule Sioux Tribe	Brule Horseman Association
		Brule Sioux Booster Club
		Golden Buffalo Casino*
		Kul Wicasa Elderly Bingo
		Lakota Care Bingo
		Lakota Family Dance Club
		Lower Brule Health Club
		Lower Brule Youth Activities
	Oglala Sioux Tribe	Children's Village Bingo
		Prairie Wind Casino*
	Rosebud Sioux Tribe	Rosebud Casino*
	Sisseton-Wahpeton Sioux Tribe	Dakota Sioux Casino*
		Veterans Memorial Recreation Center*

(continued)

**Appendix II  
Tribes and Known Gaming Operations as of  
December 31, 1996\***

<b>State</b>	<b>Tribe</b>	<b>Name of operation</b>
	Standing Rock Sioux Tribe	Bear Soldier Jackpot Bingo*
		Grand River Casino
	Yankton Sioux Tribe	Fort Randall Casino/Hotel*
Texas	Kickapoo Traditional Tribe of Texas	Lucky Eagle Casino
Washington	Confederated Tribes of the Chehalis Reservation	Chehalis Tribal Lucky Eagle Casino*
	Confederated Tribes of the Colville Reservation	Mill Bay Casino
		Coulee Dam Casino*
		Okanogan Casino/Bingo*
	Jamestown S'Klallam Tribe	Seven Cedars Casino*
	Lower Elwha S'Klallam Tribe	Lower Elwha Bingo**
	Lummi Nation	Lummi Casino*
	Makah Indian Tribe of the Makah Indian Reservation	Makah Bingo*
	Muckleshoot Indian Tribe	Muckleshoot Indian Bingo*
		Muckleshoot Indian Casino*
	Nooksack Indian Tribe	Nooksack River Casino*
	Port Gamble S'Klallam Tribe	Little Boston Bingo
	Puyallup Tribe of Indians	BJ's Enterprises, Inc.
		Puyallup Tribe Bingo Palace*
	Spokane Tribe of Indians	Brigman's Casino
		Double-Eagle Casino
		Kieffer's Store
		Lile Chief's Casino
		Pappy's Corner
		Snack'n Chat
		Spokane Indian Bingo
		Two Rivers Casino
		Wooden Nickel Casino
	Squaxin Island Tribe	Little Creek Casino
	Suquamish Tribe	Port Madison Enterprises-Bingo Operations Division*
		Port Madison Enterprises-Suquamish Clearwater Casino
	Swinomish Indian Tribal Community	Swinomish Casino & Bingo*
	Tulalip Tribes of Washington	Tulalip Casino*
	Upper Skagit Indian Tribe	Harrah's Skagit Valley Casino
Wisconsin	Bad River Band of Lake Superior Chippewa Indians	Bad River Casino
	Forest County Potawatomi Community	Northern Lights Casino*
		Potawatomi Bingo*
	Ho-Chunk Nation	Ho-Chunk Bingo*
		Ho-Chunk Casino*
		Majestic Pines Bingo*

(continued)

**Appendix II  
Tribes and Known Gaming Operations as of  
December 31, 1996<sup>a</sup>**

<b>State</b>	<b>Tribe</b>	<b>Name of operation</b>
		Majestic Pines Casino*
		Rainbow Bingo*
		Rainbow Casino*
	Lac Courte Oreilles Band of Lake Superior Chippewas	Lac Courte Oreilles Casino*
	Lac du Flambeau Band of Lake Superior Chippewa Indians	Lake of the Torches Casino*
		Bingo Enterprise Fund*
	Menominee Indian Tribe of Wisconsin	Crystal Palace Casino*
		Menominee Nation Casino*
		Menominee Tribal Bingo*
	Oneida Tribe of Indians of Wisconsin	Class II Gaming Operations*
	Red Cliff Band of Lake Superior Chippewas	Isle Vista Casino*
	Sokaogon Chippewa Community	Grand Royale
		Mole Lake Bingo
		Regency Resort
	St. Croix Chippewa Indians of Wisconsin	Hole in the Wall Casino*
		Little Hartel Casino
		Sand Lake Bingo
		St. Croix Casino*
	Stockbridge-Munsee Community	Mohican North Star Casino*
Wyoming	Northern Arapaho Tribe of the Wind River Indian Reservation	789 Bingo

<sup>a</sup>A single asterisk denotes the facilities included in our analyses (178), the names of which were taken from the financial statements submitted to NIGC. Other facility names were obtained from other NIGC data. A double asterisk denotes the facilities included in our analyses that were not operating on December 31, 1996.

Note: This information may not agree with NIGC's records because of differences in the methodologies used to identify and count facilities.

Source: GAO analysis of 1995 financial statements filed with NIGC and NIGC lists of gaming facilities.

# Major Contributors to This Report

---

## General Government Division

Harriet Ganson, Assistant Director, Tax Policy and  
Administration Issues  
Nilsa I. Perez, Assignment Manager  
Keith Steck, Evaluator  
Bryon Gordon, Evaluator  
Pam Pavord, Evaluator

---

## Office of General Counsel

Rachel DeMarcus, Assistant General Counsel

---

## Kansas City Field Office

Doris Hynes, Evaluator

---

# Glossary

---

Costs and Expenses	Payroll, management fees, depreciation, amortization, the interest portion of debt payments, and others. Under generally accepted accounting principles, the principal portion of the debt payments is not an expense and thus is not included in costs and expenses.
Gaming Revenues	Dollars wagered minus payouts.
Net Income	Total revenues minus all costs and expenses.
Net Revenues	IGRA defines “net revenues” as gross gaming revenues minus prizes and gaming-related operating expenses, not including management fees.
Operating Income	Revenues minus costs and expenses that were related to the primary business activities, such as salaries, advertisements, rents, and other expenses. It did not include revenues or expenses that were not related to the primary business activities, such as interest income; gains on sales of assets; and depreciation, amortization, and interest expenses.
Other Revenues	Sales such as food, beverages, and hotel rooms.
Total Revenues	Sum of gaming revenues and other revenues.

---

---

### Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

**Orders by mail:**

U.S. General Accounting Office  
P.O. Box 6015  
Gaithersburg, MD 20884-6015

**or visit:**

Room 1100  
700 4th St. NW (corner of 4th and G Sts. NW)  
U.S. General Accounting Office  
Washington, DC

Orders may also be placed by calling (202) 512-6000  
or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

[info@www.gao.gov](mailto:info@www.gao.gov)

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

---

**United States  
General Accounting Office  
Washington, D.C. 20548-0001**

**Bulk Rate  
Postage & Fees Paid  
GAO  
Permit No. G100**

**Official Business  
Penalty for Private Use \$300**

**Address Correction Requested**

---

