



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PDX-20-069

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TITLE: Calling Upon the NIGC to Retract Proposal for Fees on Free Play for Tribal Casinos

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Indian nations are the original American sovereign nations and the United States has recognized Indian tribes as sovereigns in the U.S. Constitution, treaties, and statutes; and

WHEREAS, Presidents Kennedy, Johnson, and Nixon promoted the Indian Self-Determination Policy in the 1960s and 1970s, President Reagan declared that Tribal economic development was essential to Indian Self-Determination in 1983, and signed the Indian Gaming Regulatory Act (IGRA) into law in 1988; and

WHEREAS, Indian gaming is the most significant means of Tribal economic development, and Congress enacted IGRA to promote tribal economic development, self-sufficiency, and strong tribal government;

WHEREAS, IGRA recognizes that “a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government,” and IGRA must be read to preserve Indian tribes’ “exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity;” 25 USC sec. 2701; and

WHEREAS, any ambiguity in IGRA must be read in favor of the Indian tribes, in accordance with the longstanding rules of construction of Indian treaties and laws as Congress intended;

WHEREAS, in IGRA, title 25 U.S.C. sec. 2717, “Commission funding” provides:

The rate of the fees imposed under the schedule established under paragraph (1) shall be—

(i) no more than 2.5 percent of the first \$1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first \$1,500,000,
of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming operations subject to regulation under this chapter; and

WHEREAS, in Section 2717 on Commission Funding, IGRA defines gross revenues as follows: “gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures”; and

WHEREAS, the NIGC is seeking to require Tribal Governments to report on “Free Play” as part of its collection of NIGC fees despite the fact that “Free Play” is not “money wagered,” within the definition of gross revenues and is not subject to NIGC fee calculations; and

WHEREAS, no accounting rule nor tribal-state compact can override the statutory provisions of 25 U.S.C. sec. 2717 on the definition of “gross revenues”; and

WHEREAS, the National Indian Gaming Association has called upon NIGC to abandon its effort to include Free Play in the calculation of gross revenues for purposes of NIGC fees, including the 0.080 fee cap established by 25 U.S.C. sec. 2717 and supports congressional appropriations for NIGC in FY 2021, 2022, and 2023; and

NOW THEREFORE BE IT RESOLVED that NCAI calls upon the NIGC to abandon its effort to include Free Play in the calculation of gross revenues for purposes of NIGC fees, including the 0.080 fee cap established by 25 U.S.C. sec. 2717; and

BE IT FURTHER RESOLVED that NCAI calls upon the NIGC to recognize that Free Play is not revenue to Tribal Governments and is not subject to fees, revenue sharing, or any tax assessment by Federal or State governments without consultation and consent of tribal nations; and

BE IT FURTHER RESOLVED that the Department of the Interior should reject any Compact that defines “gross revenues” as other than as defined in 25 U.S. C. 2717; and

BE IT FURTHER RESOLVED that Congress has authorized appropriations for the NIGC under title 25 U.S.C. sec. 2717 and that in the current National COVID-19 Pandemic and Economic Crisis, the NIGC should apply for appropriations to assist with the funding of its operations under FY 2021, 2022 and 2023, and NCAI supports congressional appropriations for NIGC operations because given the closures, restrictions and additional expenses caused by the National Pandemic, Indian nations cannot afford to pay additional fees for NIGC operations and should have economic relief to recognize the drop in revenues caused by the National Pandemic throughout the American economy, including Indian gaming;

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2020 Annual Session of the National Congress of American Indians, held Nov 8, 2020 - Nov 13, 2020, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary