



NEW YORK STATE RACING AND WAGERING BOARD

## INDIAN GAMING

### **FREQUENTLY ASKED QUESTIONS**

1. Why can Indians conduct gambling activities?
2. What is a Federally recognized tribe?
3. What does tribal sovereignty mean to Indians?
4. Why are Indians sometimes referred to as Native Americans?
5. How many tribes are there in New York State?
6. How many Tribes have gaming in New York State?
7. What games are played at Tribal casinos?
8. Why do Connecticut Indian Casinos have slot machines?
9. What is New York State's role at Indian casinos?
10. Who regulates Class III Indian Casinos?
11. Who regulates Class II Indian bingo?
12. How does a company do business with the casino?
13. How does a person obtain employment at Indian casinos?
14. Why aren't Indian casinos taxed?
15. Can Indian casinos serve alcoholic beverages?

#### **Why can Indians conduct gambling activities?**

Indian land is not under State law unless a Federal law places it under State law. The Supreme Court held that even if a tribe is under State law the State gaming regulations do not apply on Indian trust land. In 1988 Congress passed the Indian Gaming Regulatory Act permitting federally recognized Indian tribes the ability to conduct gaming activities under certain circumstances. This law allows traditional Indian gaming, bingo, pull tabs, lotto, punch boards, tip jars, and certain card games on tribal land. However, it requires a Tribal/State compact for all other forms of gaming. Today there are about 145 Tribal-State gaming compacts. Nearly 130 tribes in 24 states are involved in some kind of gaming.

The Tribe may regulate traditional forms of Indian gaming by itself. Bingo, pull tabs, lotto, punch boards, tip jars, and certain card games are regulated by the Tribe in conjunction with the National Indian Gaming Commission, although tribes, under certain circumstances, may self-regulate these activities. All other forms of tribal gaming are subject to regulation as determined and defined by State-Tribal gaming compacts.

The National Indian Gaming Commission was established by Congress to develop regulations for Indian gaming. For more information contact the National Indian Gaming Commission, 9th., Floor, 1441 L Street, NW, Washington, DC 20005, (202) 632-7003.

Back to Top

### **What is a Federally recognized tribe?**

There are more than 550 federally recognized Tribes in the United States, including 223 village groups in Alaska. "Federally recognized" means these tribes and groups have a special, legal relationship with the United States government. This relationship is referred to as a government-to-government relationship. A number of Indian Tribes and groups in the United States do not have a federally recognized status, although some are state recognized. This means they have no relations with the federal Bureau of Indian Affairs (BIA) or the programs it operates. A special program of the BIA, however, works with those groups seeking federal recognition status. Of the 150 petitions for federal recognition received by the BIA since 1978, 12 have received acknowledgment through the BIA process, two groups had their status clarified by the Department of the Interior through other means, and seven were restored or recognized by Congress.

Back to Top

### **What does tribal sovereignty mean to Indians?**

When Indian tribes first encountered Europeans, they were dealt with because of their strength in numbers and were treated as sovereign governments with whom treaties were made. When tribes gave up their lands to the United States, they retained certain sovereignty over the lands they kept. While such sovereignty is limited today, it is nevertheless jealously guarded by the tribes against encroachments by other sovereign entities such as states. Tribes enjoy a direct government-to-government relationship with the United States government wherein no decisions about their lands and people are made without their consent.

Back to Top

### **Why are Indians referred to as Native Americans?**

The term, "Native American," came into usage in the 1960's to denote the groups served by the Bureau of Indian Affairs: American Indians and Alaska Native (Indians, Eskimos and Aleuts of Alaska). Later the term also included Native Hawaiians and Pacific Islanders in some Federal programs. It, therefore, came into disfavor among some Indian groups. The preferred term is "American Indian." The Eskimos and Aleuts in Alaska are two culturally distinct groups and are sensitive about being included under the "Indian" designation. They prefer, "Alaska Native."

Back to Top

### **How many tribes are there in New York State?**

There are seven federally recognized Indian tribes in New York State. They are:

Cayuga Nation of Indians  
Oneida Indian Nation of New York  
Onondaga Indian Nation  
St. Regis Mohawk Tribe  
Seneca Nation of Indians  
Tonawanda Band of Seneca  
Tuscarora Nation

Additionally, there are two tribes on Long Island that have state, but not federal, recognition.

Shinnecock Tribe  
Unkechaug Nation of Poospatuck Indians

These tribes have a government-to-government relationship with the State of New York but not with the United States. As a matter of policy, the State of New York does not grant recognition to or enter into government-to-government relationships with Indian nations that are not federally recognized. The Shinnecock and Poospatuck relationship with the State of New York was cultivated in colonial times when on July 2, 1700 the Poospatuck received a deed for land from William Tangier Smith and on August 16, 1703 the Colony of New York and the Town of Southhampton gave the Shinnecock a one thousand year lease for certain land on Long Island. The State continued to treat these groups as Indian tribes after the American Revolution. Before either of these tribes could open any form of gambling establishments under the federal Indian gaming Regulatory Act they would first have to obtain recognition by the federal Department of the Interior.

A group known as the Ramapough Mountain Indians also have a presence in the State in Rockland County, but they have been unsuccessful in obtaining either State or Federal recognition as a Tribe. The Montauk Indian Nation of Long Island has indicated its intention to apply for federal recognition.

Back to Top

### **How many Tribes have gaming in New York State?**

Only three tribes have lawful gaming: The Seneca Nation of Indians operate Class II bingo on both their Cattaraugus and Allegheny Reservation lands and the Class III Seneca Niagara Casino in Niagara Falls; the St. Regis Mohawks operate the Class II Mohawk Bingo Palace and the Class III Akwesasne Mohawk Casino, which also houses Class II poker games; and the Oneida Indian Nation of New York operates the Turning Stone Casino, which houses both Class II bingo and poker, as well as its Class III gaming operations.

Back to Top

### **What games are played at Tribal casinos?**

Appendix A of both the Oneida and St. Regis Compacts enumerate the lawful gaming activities permitted to be operated by each tribe. These activities are: Acey Ducey, Baccarat; Bang; Beat the Dealer; Bell Jars; Best Poker Hand; Big Nine; Big Six; Blackjack; Card Wheel; Caribbean Stud Poker, Chuck-a-Luck; Color Wheel; Craps; The Fruit Wheel; Hazard; Horse Race Game; Horse Race Wheel; Joker Seven; Keno; Let It Ride, Merchandise Wheels; Mini-Baccarat; Money Wheel; Pai-Gow; Red Dog; Roulette; Super Pan Game; and Under & Over Seven. Additionally, the Oneida have been permitted to operate Sic Bo.

Back to Top

### **Why do Connecticut Indian Casinos have slot machines?**

The Mashantucket Pequot Tribe entered into an agreement with State of Connecticut on January 13, 1993 permitting the Tribe to operate slot machines at its Foxwoods Resort and Casino in exchange for contributing to the State twenty-five percent of the gross revenues from the slot machines. An amendment was made to the agreement on April 25, 1994 allowing for an identical agreement between the State and the Mohegan Tribe who had recently obtained federal recognition.

There is no gaming compact between the Connecticut and the Mashantucket Pequots. When the State refused to negotiate with the Tribe regarding casino gambling the Pequots brought suit under the now Constitutionally infirm section of the Indian gaming Regulatory Act permitting the Tribe to force recalcitrant States to the bargaining table. During this litigation both the State and the Tribe were compelled to submit a draft compact to a court appointed mediator. The mediator chose the State's proposed compact over the compact proposed by the Tribe. Under the Indian Gaming Regulatory Act, after a mediator selected a compact the State could choose to "accept" the mediator's choice or have "procedures" memorializing the choice imposed by the Secretary of the Interior. As a State lawsuit over gaming was still pending before the United States Supreme Court, the State chose not to accept the proposed compact. Thereafter, the unsigned compact was transmitted to the Secretary of the Interior who promulgated the unsigned compact as federal procedures in accordance with 25 U.S.C. § 2710 (d)(7)(B)(vii). To date, the only authority to conduct gambling activity on the Pequot reservation is the regulatory enactment of the United States government.

At the time those procedures were issued, there was a dispute between the Pequots and the State as to whether the Tribe had a right, under the Indian Gaming Regulatory Act, to operate video facsimile games. The State contended that the Tribe could not operate these games because they were not permitted under State law. The Tribe claimed that the games were subject to compact because the various types of Class III games permitted by State laws were sufficient to give the Tribe the right under IGRA to have the video facsimiles as well.

The dispute was addressed in the procedures where, in Section 15 (a), a moratorium was imposed on video facsimile operations until one of three conditions were met:

1. agreement between the Tribe and the State of Connecticut;
2. a court order; or
3. a change in State law to allow video facsimiles.

In effect the procedures provided for three separate means of resolving the video facsimile dispute between the State and the Tribe: one, within the powers of the executive; one, by judicial decree; and one by legislative prerogative.

As the Memorandum of Understanding permitting slot machines did not operate to enact new laws, nor alter the State law prohibition on video facsimile games, no legislative authorization was required for the Governor's action. The Memorandum merely resolved a dispute as to whether, based on existing law, video facsimile operations were authorized as a matter of federal law under the Indian Gaming Regulatory Act.

Back to Top

### **What is New York State's role at Indian casinos?**

The State maintains a constant twenty-four hour presence within the gaming facilities of the three Class III facilities to maintain the integrity of all activities conducted in regard to Class III gaming, and to insure the fair and honest operation of such gaming activities. Additionally, the State conducts background investigations on all employees of the casino and enterprises who conduct gaming related business with the casino to ensure their suitability.

Back to Top

### **Who regulates Class III Indian Casinos?**

Pursuant to each Compact the State jointly regulates Class III gaming facilities with a Nation or Tribal Gaming Agency, respectively.

Back to Top

### **Who regulates Class II Indian bingo?**

Class II gaming activities, e.g., bingo, pull tabs, lotto, punch boards, tip jars, and certain card games, are regulated by the Tribe in conjunction with the National Indian Gaming Commission, although tribes, under certain circumstances, may self-regulate these activities.

Back to Top

### **How does a company do business with the casino?**

Any company wishing to provide services, supplies or equipment to a Class III gaming operation must be registered by the State of New York Racing and Wagering Board. This process begins by the Nation or Tribal Gaming Agency receiving applications and forwarding such to the New York State Racing and Wagering Board, who will review the application and identify principals required to file individual applications.

Upon receipt of all required paperwork the Board will make a determination whether to temporarily register the company pending a background investigation conducted by the New York State Police Casino Detail.

If any individuals or businesses seek to provide services, supplies or equipment to the Oneida Indian Nation's Turning Stone Casino Resort they should contact: Oneida Indian Nation Gaming Commission, P.O. Box 126, Verona, New York 13478. If any individuals or businesses seek to provide services, supplies or equipment to the St. Regis Mohawk's Akwesasne Mohawk Casino they should contact: St. Regis Mohawk Tribal Gaming Commission, P.O. Box 119, Hogansburg, New York 13655. If any individuals or businesses seek to provide services, supplies or equipment to the Seneca Nation of Indians they should contact Michael Green, Chairman of the Seneca Gaming Authority at (716) 299-1246 or Mickey Brown, President of the Niagara Casino at (716) 299-1100.

Back to Top

### **How does a person obtain employment at Indian casinos?**

Both the Oneida and St. Regis Mohawk compacts require that prior to employment a person must be issued a temporary certification by the State Racing and Wagering Board and a temporary license by the applicable Nation or Tribal Gaming Agency. If any individuals seek employment with the Oneida Indian Nation's Turning Stone Casino Resort they should contact: Human Resources Department, P.O. Box 126, Verona, New York 13478. If any individuals seek employment at the St. Regis Mohawk's Akwesasne Mohawk Casino they should contact: Human Resources Department, Akwesasne Mohawk Casino Training Center, Route 37, Hogansburg, New York 13655. If any individuals seek employment at the Seneca Niagara Casino they should contact Michael Green, Chairman of the Seneca Gaming Authority at (716) 299-1246 or Mickey Brown, President of the Niagara Casino at (716) 299-1100.

It should be noted that every gaming employee will be required to undergo both New York State and Federal Bureau of Investigation criminal history fingerprint profiles and a full background investigation conducted by the New York State Police.

[Back to Top](#)

### **Why aren't Indian casinos taxed?**

States are limited by federal law on the monies they are authorized to receive from Indian tribe's Class III gaming operations. Section 2710 (d)(4) of the Indian Gaming Regulatory Act states:

Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity.

No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

Additionally, the Indian Gaming Regulatory Act limits how each tribe may expend the revenues they derive from gaming operations. Pursuant to § 2710 (b)(2), the Chairman of the National Indian Gaming Commission may not approve any tribal ordinances or resolution for the conduct of Class II gaming if net revenues from the tribal gaming are to be used for purposes other than to:

1. to fund tribal government operations or programs;
2. to provide for the general welfare of the Indian tribe and its members;
3. to promote tribal economic development;
4. to donate to charitable organizations; or
5. to help fund operations of local government agencies.

[Back to Top](#)

### **Can Indian casinos serve alcoholic beverages?**

Yes, provided that the nation or tribe has obtained a license to do so issued by the New York State Liquor Authority and complies with all State laws, rules and regulations regarding alcoholic beverage provision. The Akwesasne Mohawk Casino has obtained such a license. To date, the Oneida's Turning Stone Casino Resort has not applied for a liquor license.

[Back to Top](#)

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