



Tribal Sports Betting Opportunities

by Knute Knudson

Now that tribal operators have the opportunity to enhance their current operations with sports gaming products, tribes contemplating sports gaming must consider both regulatory and market issues.

On the regulatory side, new opportunities for tribal sports betting will occur within several concentric circles – on site, on reservation, intrastate, and interstate. Authority for sports wagering within the boundaries of Indian lands is governed by Class III tribal-state compacts. The repeal of PASPA means tribes may now agree or amend Class III compacts with states to offer tribal sports betting on their Indian lands.

Compacted exclusivity will require resolution in those cases where states have agreed with resident tribes to grant statewide or regional tribal gaming exclusivity in exchange for a share of tribal gaming revenue. Those states must now consider whether permitting state-regulated sports betting is worth the risk and cost of violating tribal exclusivity and ending corresponding revenue payments from tribes to states. Or, those states must come to new terms with resident tribes that will accommodate sports betting. Tribes in states without exclusivity agreements are considering their options and are talking to state officials about compact amendments to permit sports betting on their Indian lands.

In four states – Mississippi, New York, North Dakota, and Wyoming – local tribes and those states anticipated the possibility of a PASPA repeal and agreed to compacts (Class III Procedures in the case of Wyoming) that permit tribal sports betting in the event PASPA was repealed. The Mississippi Choctaw, as noted below, are already offering sports wagers. New York tribes are waiting for regulations from the state's gaming authority in order to proceed. However, one New York tribe has already announced a sports betting deal anticipating state regulations. Legislation to permit gaming by North Dakota tribes has been introduced while Wyoming tribes are looking at their options for sports betting. But, keep in mind, IGRA only authorizes tribal gaming on Indian lands. As a result, tribal online gaming conducted under IGRA is limited to bettors located on tribal lands absent other arrangements with states. Regulatory structures for the broadest geographic tribal market areas, intrastate and interstate, are in the earliest stages of development.

Near term, given the opportunity to operate onsite or more broadly, on their tribal lands, tribal operators face the same question confronting commercial operators: Can sports gaming be accretive to our tribe's existing operation? That question is often a matter of scope – what is the optimal scope of sports betting for a particular tribe? Tribes have the option to scale their sports-betting product to fit their particular size and market characteristics.

Tribes with the most substantial operations may be best served by a full-feature, traditional, over-the-counter sports betting operation. Such tribes can accommodate the staffing and liquidity required for this model. They may also benefit by other sports betting products offered in addition to the typical model including on-site kiosks and onsite, mobile sports betting.

A historic example of such a scaled tribal offering is the Mississippi Band of Choctaw Indians. The tribe's Golden Moon Hotel & Casino recently made gaming history when it became the first non-Nevada tribal casino to open a sports book post-PASPA repeal. The tribe's casino patrons can now place bets over the counter at the tribe's Pearl River Resorts' Golden Moon Hotel & Casino and Silver Star Hotel & Casino in Choctaw, MS., and at Bok Homa Casino in Sandersville, MS. This configuration is just the start. The tribe has announced it will add kiosks and other essential sports betting peripherals to their offerings in the future.

Activity on two regulatory fronts will determine the shape of tribal opportunities going forward:

- States permitting sports betting that also have a tribal presence will, per the terms of IGRA, need to negotiate Class III compact terms for sports betting with interested tribes in their states. Legislatures in Michigan and Oklahoma considered bills on this issue last session, but were unable to resolve tribal issues. Connecticut's governor also tried to strike a deal with the state's tribes on sports gaming, but a deal could not be concluded. There is already new action on this front in Connecticut and activity in other states is anticipated during the 2019 legislative session.
- Tribes wishing to offer online sports betting to patrons not located on Indian lands will need to come to terms with states in which bettors are located. This is a challenging area of law given conflicts that must be resolved relative to respective tribal and state sovereignty.

Sports betting can provide real value for many tribes as the regulatory pictures become more clear and more tribes are able to take advantage of this new product. For individual tribes, it will be critical to examine all of the sports betting product options available given their own regulatory situation and to select the option that provides the best fit for a tribe's particular market and operational characteristics. ♣

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