



## REVENUE ALLOCATION PLANS –

WHAT ARE THEY

WHEN ARE THEY NECESSARY

WHAT ARE THE REQUIREMENTS

WHAT ARE THE BEST PRACTICES

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# OVERVIEW

- What are Revenue Allocation Plans ?
- When are they needed, what do they do, and what is required ?
- What are the best practices ?
- Why do we like them?

# WHAT IS A REVENUE ALLOCATION PLAN

A Tribal Allocation Plan or Allocation Plan is:

*The document submitted  
by an Indian Tribe that provides for the  
distribution of net gaming revenue.*

**25 C.F.R. § 290.2**

*It is the document you must submit that describes how you will  
allocate net gaming revenues.*

**25 C.F.R § 290.4**

\*Also referred to as a RAP

# WHEN IS A REVENUE ALLOCATION PLAN NEEDED

## RAP is needed:

When a Tribe generates Class II or Class III net gaming revenue

When a Tribe intends to make per capita payments to its members  
from its net gaming revenues

## RAP is **not** needed:

When a Tribe receives gaming revenue generated by another Tribe or  
other 3<sup>rd</sup> party

When Tribal revenue is not generated from Class II or Class III gaming

When a Tribe does not distribute per capita payments to its' members

# WHAT DOES A REVENUE ALLOCATION PLAN DO

## A Revenue Allocation Plan

- ❑ determines how the Tribe's net gaming revenues will be allocated and used by the Tribe.
- ❑ assists Tribal Governments to plan and implement specific initiatives.
- ❑ can be used to address community needs.
- ❑ protects the interests of the minors and incompetent members of the Tribe.
- ❑ determines how much the per capita distributions to members will be.
- ❑ determines who is eligible for per capita payments.

# What is the process for approval

1<sup>st</sup> step

- **Tribe** – enacts a tribal resolution according to Tribal law

2<sup>nd</sup> step

- **Superintendent/Regional Director** - submits verification to OIG that the ordinance was properly adopted according to tribal laws

3<sup>rd</sup> step

- **Office of Indian Gaming** - conducts an analysis & review, forwards a recommendation to the Assistant Secretary-Indian Affairs

4<sup>th</sup> step - **Assistant Secretary-Indian Affairs** - makes final decision

# LAW GOVERNING

- **Indian Gaming Regulatory Act (IGRA)**

**25 U.S.C. § 2710 (b)(3)**

**25 U.S.C. §2710 (b)(2)(B)(i)-(v)**

**And**

**25 C.F.R. Part 290**

# INDIAN GAMING REGULATORY ACT

IGRA states that net gaming revenue can not be used for any purposes other than:

1- fund tribal government

2- provide for general welfare of Tribe

3- promote tribal economic development

4- donate to charitable organizations

5- help fund operations of local government



# WHAT MUST A RAP CONTAIN

## 25 C.F.R 290.12

Percentage breakdown for allocation must total 100%

And

It must meet the following criteria:

It must reserve an adequate portion of

net gaming revenues from the tribal

gaming activity for one or more of the following:

# WHAT MUST A RAP CONTAIN

## 25 C.F.R 290.12

- Funding for tribal government and programs
- Provide for general welfare of tribe and members
  - Promote tribal economic development
  - Donate to charitable organizations
- Help fund operations of local government

# WHAT MUST A RAP CONTAIN

## 25 C.F.R 290.12

- Must contain enough detailed information to allow the Approving Bureau Official (ABO) to determine that it complies with this section, particularly regarding funding for tribal government operation or programs, and for promoting economic development

- Particularly when:

Substantial changes in percentage allocations

Per capita distribution will be above 50%

# WHAT MUST A RAP CONTAIN

## 25 C.F.R. 290.12

- Must protect and preserve the interests of minors and other legally incompetent persons
- Ensure Tribe makes per capita payments for eligible minors or incompetents available to the parents/legal guardians at times and in amounts necessary for health, education, or welfare
- Establish criteria for withdrawal of funds, acceptable proof for accountability
- Establish circumstances for denial of withdrawal

# WHAT MUST A RAP CONTAIN

## 25 C.F.R. 290.12

- Must establish a process, system, or forum for dispute resolution
  - Must describe how Tribe will notify members of tax liability
  - Must authorize distribution to members according to specific eligibility requirements
- Must establish process system, or forum for resolution of disputes concerning allocation and distribution of per capita payments

# BEST PRACTICES

## WHY

- Comply with IGRA and 25 C.R.F. § 290 regulations
  - Demonstrate sound financial management of Tribe's resources
    - Variety of strategies that work within the same regulatory framework

# BEST PRACTICES

## WHY

- Maintain Tribes as primary beneficiaries
- Tailored to address specific needs/concerns of each Tribe
  - Serve both short and long term interests of Tribe
    - Address immediate needs of tribal members

# TRENDS

1. Sound financial management
2. Serve the best interests/issues of Tribe
3. Balance community vs. individual wants & needs



# FINANCIAL MANAGEMENT

2014 Internal Revenue Service  
ruling on “taxable income”



decrease in allocation per capita distribution

increase in allocation general welfare



(Tribal General Welfare Exclusion Act of 2014)

# FINANCIAL MANAGEMENT

## **Tribe's 1<sup>st</sup> RAP created - IRS rules/benefits identified**

*The Tribe affirms that it may adopt and implement General Welfare Programs contemplated by the Tribal General Welfare Exclusion Act of 2014*

*Direction regarding programs- In order to ensure that the intended beneficiaries of the Tribe's general welfare programs remain the primary beneficiaries ..,*

*.., in its interest to take reasonable steps to prevent benefits from being treated as income for federal tax purposes..,*

# FINANCIAL MANAGEMENT

*Accordingly the Tribe shall take steps to comply with guidance from Congress and the Internal Revenue service by requiring the following with respect to General Welfare Programs:*

- (a) Shall be specified and include written guidelines which specify how individuals qualify*
- (b) Shall be available to any Tribal Member, qualified non-Member, or identified group of members who satisfy program guidelines*
- (c) Cannot discriminate in favor of Members of Executive Committee*
- (d) May not be compensation for services*
- (e) Should not be lavish or extravagant*
- (f) Other requirements of federal law to ensure benefits of such programs are not treated as “income” and subject to federal taxation*

**COMPREHENSIVE LIST  
PERMITTED PROGRAMS**

**Tribal Housing Programs**

**Tribal Education Programs**

**Tribal Elder & Disabled Programs**

**Cultural and Religious Programs**

**Additional Tribal Programs**

# NEW TREND

- Tribes are developing their own Tribal General Welfare Ordinance

-In conjunction with the Internal Revenue Services Tribal General Welfare Exclusion Act of 2014

-Aligns with IRS requirements for general welfare categories/rules

# IRS RESOURCE

-Internal Revenue Service - Resource for Tribes

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# TRENDS

- Implementation of Optional Tax Deferred Per Capita payment plans
- RAP developed in conjunction with Tribe's 5 year Strategic Plan
- Charitable donations category available for community and individual community members needs

# TRENDS

- Revenues not expended within fiscal year allocated back to economic development programs or reinvested
- Creation of a Distribution and Investment Board that reviews proposals for supplemental funding to distribute excess net revenues
- Pooled trust accounts for minor's and incompetent members trust funds



# METHODS

- Establishing a sliding scale for 100% allocation versus a set amount:

Tribal Government Operations from 38% to a range of 30% to 40%,

General Welfare of the Tribe from 50% to a range of 40% to 50%,

Economic Development from 11% to a range of 5% to 25%,

Donations to charitable organizations from 0% to a range of 0% to 5%,

and

Donations to local governments from 1% to a range of 0% to 5%

# METHODS

- Revenue Allocation Plan developed in conjunction with Tribe's  
5 year Strategic Plan
- Revenue Allocation Plan developed through budgeting process
  - Establishes priority initiatives
  - Assists with achieving Tribal Government goals

# METHODS

- Graduating rates of per capita payments for tribal members enrolled after a certain date:

new member must wait 1 year after enrollment:

year 2 receives 25%,

year 3 receives 50%,

year 4 receives 75%,

year 5, same amount as other members of the same age

# BEST INTEREST OF TRIBE- EDUCATION

## Education as part of Eligibility Requirements

- Must have completed a HS diploma or equivalent before minor trust funds are distributed:
  - tribal member must wait until reaches age of 21, or age of 25, etc.,*
- Must have completed a certified financial management course
- Additional payments above a base line for higher educational levels for youth:

*In order to provide incentives for younger Tribal members to pursue educational and personal growth opportunities, eligible members btw 18 & 24 years of age are required to complete certain achievements to receive additional payments above base payment ( base amount + 1/2 of additional amount for associates' degree, or 2 years of honorable, active duty in service, or completion of vocational school ) etc.,*

# BEST INTEREST OF TRIBE-EDUCATION EXCEPTION

- Exceptions to educational requirements:

Legally incompetent members of Tribe

# BEST INTEREST OF TRIBE- EDUCATION

- Penalties/Forfeitures to per cap payments

..., payments shall be distributed as provided above except as may be modified, pledged, terminated or otherwise pursuant to...

A tribal member has no property rights to modified, reduced, forfeited, withheld, off-set, assigned, pledged, and/or terminated per capita payments

- Tribe's Law & Order Code linked to RAP

penalties applied to parent's per cap payment for child's truancy,  
and

for any period of a child's long term suspension or expulsion from school

# BEST INTEREST OF TRIBE- EDUCATION

No trust fund for minors

## Policy Statement

*The Tribe retains the inherent sovereign right to protect the interests of its Minors, and strongly promotes education, and seeks to encourage its Tribal Members to graduate high school and to pursue degrees in colleges, universities, or vocational school. The Tribe shall therefore tailor its distribution of monies to Minors so as to encourage Minors to complete their education and prepare for their futures.*

- Eligibility requirement- 18 years of age or older with verified HS diploma or equivalent

## BEST INTEREST OF TRIBE

- *The Tribe retains the inherent sovereign right to protect the interests of its Minors, is committed to advancing the education of the Minors, and seeks to encourage Minors to pursue advanced degrees and education.*
- *The Tribe is concerned that providing Per Capita Distribution to Minors or that by allowing the Distributions to accumulate interest in an interest bearing account, the Minors may not be motivated to perform to their highest levels in school, and may become dependent on Per Capita Distributions alone.*
- *The General Council finds that the different treatment of Minors with regard to Per Capita Distributions bears a rational relationship to the legitimate governmental objective of encouraging Minors to complete their schooling, and*
- *that this Plan is designed to promote the permissible objective of providing for the general health, education, and welfare of the Tribe and its Tribal Members. Notwithstanding these limitations with respect to Per Capita Distributions, the Tribe anticipates that tribal governmental programs and related benefits will be available to Minors.*



# BEST INTEREST OF TRIBE- BEHAVIOR

- Penalties/Forfeitures to per cap payments
- To advance the personal health, safety, and welfare of qualified tribal members and the Nation, and to promote desired conduct, per caps will be forfeited upon the following negative behaviors...
- any forfeited proceeds shall be placed in a separate account to fund government programs dealing with alcohol and drug related offenses...
- forfeiture of payments shall apply to criminal convictions from all jurisdictions
- The person must completely serve the sentence prior to reinstatement of the per capita payment
- All tribal members, in effect, will be starting with a “clean slate” for purposes of the 3 Strikes provision

# BEST INTEREST OF TRIBE- BEHAVIOR

- Based on 3 Strikes: Strike 1= 25%, Strike 2= 50%, Strike 3 = 100%
  - Offenses are identified
    - Strike 1 offenses
    - Automatic Strike 2 offenses
    - Automatic Strike 3 offenses
  
- The following offenses may be categorized as a Strike 1 or 2 depending on underlying facts at discretion of the Prosecutor:
  - Care of Dependent Persons
  - Permitting a child's life, health or morals to be imperiled
  - Contributing to the delinquency and dependency of a minor

# BEST PRACTICES

## WHY

- Comply with IGRA and 25 C.F.R. 290 regulations
- Demonstrate sound financial management practices
  - Maintain Tribes as primary beneficiaries
- Serve both short and long term interests of Tribe
  - Address immediate needs of tribal members
- Wide variety of strategies within the same regulatory framework
  - Tailored to address specific needs/concerns of each Tribe

# CONCLUSION

- Demonstrate prudent & responsible stewardship of Tribe's resources
- Allocations are based on the best interest of Tribe and its' members
- Consideration of short & long term financial implications,

IRS ruling- Tribal General Welfare Exclusion Act of 2014  
Per capita distributions **subject** to federal income tax  
General welfare distributions **not subject** to income tax