

## Supreme Court Says Schwarzenegger Illegally Taxed Tribe Orders State to 60-day Negotiation With Rincon Tribe

The United States Supreme Court has let stand the decision of two lower courts that former Gov. Arnold Schwarzenegger acted in “bad faith” by illegally taxing tribal gaming revenues, during compact negotiations with a Southern California tribal government.

On June 27, the high Court announced its decision not to hear the state’s appeal of previous court decisions by the U.S. District Court for the Southern District of California and the United States Court of Appeals for the 9th Circuit.

The case will be remanded to San Diego, where the Federal District Court will preside over a 60-day period of negotiations between the state and Rincon Band of Luiseño Indians, of Valley Center, CA. If the parties cannot reach agreement, the tribe and the state will each submit a “last-best-offer to a court appointed mediator, who must select the proposal that most complies with the Indian Gaming Regulatory Act (IGRA) and the court’s findings.

The Rincon Band of Luiseño Indians sued Gov. Schwarzenegger, August of 2004, claiming he violated federal law when the Rincon tribal government asked to open negotiations to add slot machines to the 1600 it operated at its Harrah’s Rincon Resort and Casino. The negotiations stalled over the state’s demand for 95 percent of the tribe’s new revenue to be generated by the expansion.

“Regrettably, Gov. Schwarzenegger chose to thumb his nose at federal law, and the tribe’s interest in reasonable compromise, costing the state and the tribe money and time – money better spent in creating jobs and providing much needed services – to settle something that reasonable people would have been able to resolve,” stated Rincon Chairman Bo Mazzetti.

The Rincon Band is optimistic that the Brown Administration will take advantage of the court’s decision and return to the bargaining table ready to follow the federal law that governs tribal-state compact negotiations, prepared to start fresh, and generate new revenues for local services.

“Rincon is just one tribe, a small player in the scheme of the state’s overall number of tribal gaming enterprises, and their contributions to Californians. But, we believe, this is an opportunity to set a new course for negotiations between the tribes and the state: One that is not divisive politically,

but demonstrates how a governor with vision can create a partnership between both governments.”

In addition to being unable to agree on a fair tribal contribution for expansion, the tribe and state disagreed on where tribal fees should be placed, with the tribe advocating for funding projects that benefit communities located near the casino. The Schwarzenegger administration demanded the revenue go to the general fund.

The 9th Circuit Court agreed with the tribe and the district court that by placing tribal gaming fees in the state general fund, the state was taxing the tribe. The federal law, which governs compact and revenue sharing rules between tribal governments and state governments, identifies tribal economic development and governance as the primary purpose of Indian gaming.

“If we met the Schwarzenegger demands, we didn’t make any money. If we didn’t agree to his demands, we couldn’t expand,” stated Mazzetti. He asked, “Where was the benefit for the tribe?”

IGRA only allows states to seek compensation for costs related to gaming such as regulation, gambling addiction and to mitigate impacts on neighboring communities. Judge Milan Smith, writing for the 9th Circuit Court of Appeals, said, “No amount of sophistry can undermine the obvious: a non-negotiable, mandatory payment ... for unrestricted use yields public revenue, and is a ‘tax.’”

“Governments do not tax other governments. The federal law is clear in that the compacting process cannot be used to impose state taxes on tribes. The Court sliced through the state’s rhetoric of calling these payments ‘fees’ or ‘assessments’ to find that it is an illegal tax,” said Scott Crowell, attorney for the Rincon Band.

Mazzetti noted the Rincon decision is also a victory for the county and local governments. The rural unincorporated region where the Rincon Reservation is located is populated by pockets of suburban communities, which are regularly devastated and threatened by wild-fires. The population growth has also increased demands for more police protection and road improvements.

According to Mazzetti, “It made perfect sense to us that by helping to provide basic public safety needs – like police, fire and road improvements – in our region, the state government



and everyone benefitted. Especially since the county cannot afford to expand services and is actually being forced to cut back due to loss of state revenues.”

Central to the lawsuit was the Schwarzenegger administration’s demands that the Rincon Band pay the state \$38 million, an amount that left the tribe receiving only \$2 million of the \$40 million in projected new earnings the additional slot machines would generate.

“We expected to pay more for additional machines, but the governor’s demands for an increased payment of 10 percent on our existing 1,600 machines and 15 percent on any new machines, were outrageous. And that’s on gross, not net revenues! No business would be asked to take this type of deal, let alone agree to it.”

Schwarzenegger, claiming in his political campaign for governor that tribes were not paying their fair share to the state, changed compacts during his administration, and shifted tribal revenue sharing fees from special trust funds with designated gaming related purposes, to the general fund.

“Schwarzenegger acted as though tribes are simply another source of revenue for the state. They are not,” said Crowell.

“Tribes are governments, with the responsibility to provide services to their members and steward their lands. Federal law mandates that tribal gaming revenue be used by the tribes for essential tribal governmental purposes, California tribes operated on shoe-string budgets and occasional federal grants before Indian gaming came around, and many still do.

“Rincon recognizes that the state is in a financial crisis. But tribes have been in a financial crisis for hundreds of years. Someone had to stop the state from slowly draining the one sure economic resource that tribes have as means of generating revenue to fund tribal government programs. We hope the Brown administration will give Rincon the respect it deserves as a government and work with the tribe to reach a legal and reasonable tribal-state compact that truly represents ‘a fair share for the tribe, as well the state’,” Crowell added. ♣

*For more information about this recent legal decision, call Nikki Symington at (619) 922-2172 or email [nikkisymington@cox.net](mailto:nikkisymington@cox.net).*

#### Native American Financial Services

## Build, renovate, or expand your gaming and hospitality facilities.

We have worked successfully with many Native American Nations. KeyBank’s Native American Financial Services group spends time understanding your unique culture and priorities so we are better able to offer strategic advice. As your Nation’s priorities evolve, so do our recommendations. We will provide timely and relevant ideas throughout our relationship.

KeyBank has the resources to help you reach your goals, with expertise in:

- Managing short- and long-term cash
- Planning, protecting, and safeguarding your Nation’s assets
- Financing for the future of your Nation

**go** to [key.com/nativeamerican](http://key.com/nativeamerican)

**call** 866-382-8684 or Mike Lettig at 425-709-4503

**KeyBank** 

Unlock your possibilities

All credit products are subject to credit approval.  
Key.com is a federally registered service mark of KeyCorp.  
©2011 KeyCorp.

**KeyBank is Member FDIC.** ADL3470

