Since 2015, the State of California has entered into five new Tribal-State gaming compacts with Revenue Sharing Trust Fund (RSTF) revenue sharing payments subject to annual credits for certain approved tribal expenditures. These credits can take a revenue sharing fee of, for example, 6% of net win and provide offsetting credits for up to 60% of such fees for an effective revenue sharing rate in certain circumstances of about 2.4 percent. One such new compact for the Santa Ynez Band of Chumash Indians was executed by Governor Brown on August 26, 2015, ratified by both houses of the California legislature and published in the Federal Register on December 23, 2015.

The other new California Tribal-State gaming compacts with RSTF revenue sharing credits are as follows:

- Jackson Band of Miwuk Indians (June 17, 2015)
- Sycuan Band of Kumeyaay Indians (Sept. 2, 2015)
- Pala Band of Mission Indians (May 9, 2016)

Following are revenue sharing offsets from the Chumash Compact as a beginning point for comparison, including a brief overview of compact payments in California and an itemization of the revenue sharing offsets that have been approved to date.

Revenue Sharing in California

California Compacts walk a tightrope between the approved fees in the 1999 California Tribal State Compacts and the disapproved general fund revenue sharing in the decision of the Ninth Circuit Court of Appeals in the Rincon case. The 1999 California Compacts were approved by referendum in Propositions 5 (legislative referendum) and 1A (State Constitutional referendum). The 1999 Compacts had two fees: the Special Distribution Fund (SDF) and the Revenue Sharing Trust Fund. The SDF was based on a percentage fee of net win for devices in operation in 1999 (Grandfathered Gaming Devices) to pay for costs of regulation, problem gambling, backfilling the RSTF and local government mitigation fees. The RSTF is based on per device license fees to permit an amount of devices in excess of the Grandfathered Gaming Devices. The RSTF is supposed to provide the benefits of statewide tribal gaming to non-compacted federally recognized tribes (any tribe with less than 350 gaming devices) in an amount of $1.1 million per year. The Ninth Circuit Court of Appeals approved this SDF/RSTF pursuant to the Indian Gaming Regulatory Act (IGRA) in In Re Gaming Related Cases (Coyote Valley II) decided in 2003.

In contrast, general fund revenue sharing was held to violate IGRA in Rincon v. Schwarzenegger, 602 F. 3d 1019 (9th Cir. 2010). Without defending the new compacts, they keep the SDF but limit it only to pay actual State regulatory costs. The new compacts change the RSTF to flat percentage of either gross gaming revenue or net win for all Class III devices over 350 to fund the $1.1 million per non-gaming and limited gaming (under 350 devices) federally recognized Tribes in a revenue sharing percentage between 4.75% and 6%.

Provisions for Credits Related to RSTF Payments – The 2015 Chumash Compact provides the tribe with annual credits for up to sixty percent (60%) of the payments otherwise due for five (5) categories of offsets:

a. First responder, tourism and infrastructure payments
b. Non-gaming related capital investments/economic development
c. Renewable energy projects
d. Heath care facilities or services
e. Water treatment or conservation
f. General welfare benefits to tribe or other Native Americans

First Responder, Tourism and Infrastructure Payments – The 2015 Chumash Compact provides:

(a) Payments by the Tribe to the County and local jurisdictions operating facilities or providing services within the County for purposes of improved fire, law enforcement, public transit, education, tourism, and other services and infrastructure improvements intended to include serving off-reservation needs of County residents, and not otherwise required by section 11.0. Such payments shall be subject to approval by the State or State Designated Agency. At least twenty percent (20%) of the annual credits authorized by this section 5.3 shall be utilized for the purposes described in this subdivision (a).

The payments in this section (a) are only approved in the 2015 Chumash Compact by the State. Other Compacts such as Jackson, United Auburn, Sycuan and Pala instead use the County or local jurisdictions for approval.
Non-Gaming Related Capital Investments/Economic Development – The 2015 Chumash Compact provides:

(b) Non-gaming related capital investments and economic development projects by the Tribe on or off tribal trust lands that the State or State Designated Agency agrees provides mutual benefits to the Tribe and the State because, for instance, they have particular cultural, social or environmental value, or diversify the sources of revenue for the Tribe’s general fund.

This section is broadly written to include investments both on and off trust lands which is followed by Sycuan and Pala. United Auburn in contrast does not specify the trust status of the land.

Renewable Energy Projects – The 2015 Chumash Compact provides:

(c) Investments by the Tribe and any funds paid to the State (not including direct or indirect state or federal funding) in renewable energy projects that, in part, serve the Gaming Facility or any improvements incorporating renewable energy technology on real property owned by the Tribe, or its members and lineal descendants, and projects that incorporate charging stations for electric or other zero emission vehicles that are available to patrons and employees of the Gaming Facility, and the Tribe, its members and lineal descendants. For purposes of this subdivision (c), “renewable energy project” means a project that utilizes a technology other than a conventional power source, as defined in section 2805 of the Public Utilities Code, as it may be amended, and instead uses as a power source biomass, geothermal, small hydroelectric, solar, or wind, as those power sources are defined in section 1391, subdivision (c), of title 20 of the California Code of Regulations, as they may be amended. The power source must not utilize more than twenty-five percent (25%) fossil fuel.

The 2015 Chumash Compact focuses on who owns the property, such as the tribe, its members and lineal descendants. In contrast, Jackson, United Auburn and Sycuan go beyond the Gaming Facility to specify the inclusion of parking areas, parking garages and refueling stations.

Health Care Facilities or Services – The 2015 Chumash Compact provides:

(d) Payments (not including direct or indirect state or federal funding) to support capital improvements and operating expenses for facilities within California that provide health care services to tribal members, Indians, and non-Indians.

This support for health care was followed by every new Compact since 2015.
Water Treatment or Conservation – The 2015 Chumash Compact provides:

(e) Investments by the Tribe and any funds paid to the State (not including direct or indirect state or federal funding) in water treatment or conservation projects that, in part, serve the Gaming Facility or any improvements incorporating water conservation or treatment technology on real property owned by the Tribe, or its members and lineal descendants.

Water treatment and conservation was a priority for the 2015 Chumash Compact as the tribe was forced in 2002 to self-fund its waste water treatment plant and wanted to upgrade it in 2015. This is not included in United Auburn but is included in Sycuan and Pala Compacts.

General Welfare Benefits to Tribe or Other Native Americans – The 2015 Chumash Compact provides:

(f) Providing general welfare benefits for, among other things, educational, healthcare, cultural or vocational purposes, to non-enrolled members of the Tribe and other Native Americans in the community.

The Chumash have a long history of charitable giving and this section was to create payments to its non-enrolled members and other Native Americans as a compact RSTF offset. Auburn limited such payments to Indians of Maidu or Miwok descent. Auburn and Pala also include grants to other federally recognized tribes.

Documenting the Offsets – The 2015 Chumash Compact provides:

The Tribe shall provide notice to the State of its intent to exercise any of its options under this section 5.3. The State shall have the right to review proposals under this section, and in the exercise of its reasonable discretion disapprove it for receipt of credit under this section 5.3 within ninety (90) days of receipt of notice if the proposal does not meet the purposes set out above, with such disapproval subject to dispute resolution per section 13.0. Once approved, the State shall not withdraw any approval without the agreement of the Tribe or without going through dispute resolution per section 13.0. All excess credits that cannot be applied in any one (1) year shall carry forward to all following years until completely exhausted.

All of the Compacts after 2015 allow the unused credits to carry forward. But there are slight differences in getting the credits approved with Jackson and Sycuan giving the State 90 days to object/disapprove. All disputes then go to dispute resolution per the Compact.

Updates – On June 29, 2016 Governor Brown announced he had signed four new Compacts which still have to be ratified by the legislature and published in the federal register:

• Viejas Band of Kumeyaay Indians (signed 06/28/16) has the same offsets as the 2015 Chumash Compact plus a new offset for recycling programs.
• Barona Band of Mission Indians (signed 06/29/16) adds offsets for loss of sales tax revenues, education for non-tribal members costs of Association meetings and recycling programs.
• Buena Vista Band of Me-Wuk Indians (signed 06/28/16) has almost same offsets as 2015 Chumash Compact.
• Jackson Rancheria Band of Miwuk Indians, First Amendment to June 17, 2015 Compact (signed 06/22/16) to conform Jackson offsets to later compacts such as 2015 Chumash Compact offsets and add sales tax offset.

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