



[Via e-mail to reg.review@nigc.gov](mailto:reg.review@nigc.gov)

August 23, 2013

Tracie Stevens, NIGC Chairwoman
Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L St., N.W., Suite 9100
Washington, DC 20005

Re: [IGT Comments on Classification of "Electronic One Touch Bingo System," 78 Fed. Reg. 37998 \(June 25, 2013\)](#)

Dear Chairwoman Stevens and Commissioner Little:

This letter comments on the National Indian Gaming Commission's proposed reinterpretation of an agency decision regarding the classification of electronically linked bingo games that can be played utilizing only one touch of a button ("one touch bingo"). 78 Fed. Reg. at 37998.

IGT strongly supports the NIGC's proposed classification of one touch bingo as a Class II bingo game. Such a classification is consistent with the Indian Gaming Regulatory Act ("IGRA"), is consistent with Congress' intent that tribes have maximum flexibility to use modern technology for Class II gaming, and will allow tribes to fully benefit from tribal government gaming operations that use electronic bingo games.

IGT Experience

Since IGRA became law, IGT has been among the primary suppliers of gaming equipment in Indian Country, and so is a long time supporter of tribal economic development and of the promotion of strong tribal government.

IGT provides gaming equipment in nearly every jurisdiction where gaming is legal worldwide. It currently holds over 350 gaming licenses and has extensive experience adapting its product line to the varying technical and regulatory requirements of the many markets in which it operates. Our experience has taught us that gaming operators must be able to provide the most modern legal gaming technology to their customers in order to be fully competitive.

Tribes seeking to negotiate, renew, or expand Class III gaming compacts lack significant power to compel states to negotiate in good faith. In such circumstances, viable Class II gaming may be the only leverage available to tribes. To that end, IGT understands that Class II gaming must be available in the optimum legal configuration for tribes to provide their customers the full spectrum of gaming opportunities and thereby realize the greatest return from their government gaming operations.

Qualification of One-Touch Games as Bingo

We concur with the Commission's reasoning in support of this change found in the "Summary of Proposed Reinterpretation" published with the Commission's June 25th, 2013 Request for Public Comment.

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We believe two critical arguments in support of the proposed reclassification stand out as especially compelling: We agree with the Commission that one-touch games satisfy IGRA's definition of Class II bingo and we believe it is important to honor Congress' stated intent that tribes have access to modern methods of conducting Class II games.

One Touch Games Satisfy The Legal Definition of Bingo

The 9th Circuit Court, looking at what Congress did intend in IGRA in the case *U.S. v. 103 Electronic Gambling Devices*, 223 F. 3d 1091, determined that the three elements of bingo mandated in IGRA were the sole means to determine if a game was bingo and thus Class II. IGRA defines bingo as a game in which players: "(1) play for prizes with cards bearing numbers or other designations; (2) cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and (3) win the game by being the first person to cover a designated pattern on such cards."

The Court's opinion noted:

"Whatever a nostalgic inquiry into the vital characteristics of the game as it was played in our childhoods or home towns might discover, IGRA's three explicit criteria, we hold, constitute the sole legal requirements for a game to count as class II bingo.

There would have been no point to Congress's putting the three very specific factors in the statute if there were also other, implicit criteria."

Thus, a game that includes the three elements of bingo laid out in IGRA is Class II bingo.

The second bingo criterion requires the player to cover the numbers or designations on his card when such numbers or designations are drawn or determined. Since the courts have already determined that use of electronic bingo cards and electronic daubing of such cards are consistent with the statute, there is no basis for the NIGC's previous determination to restrict the extent to which a daubing aid may assist a player, and when that assistance may be invoked.

If a player asks the player interface to assist in daubing, the timing of the request and the timing of the satisfaction of the request are immaterial to whether an aid is legitimately utilized. A player should be able to initiate play, request daubing assistance, and receive that assistance without having to repeatedly renew that request after each ball release. The player is actively engaged in the play of the game regardless of the number of times a daub is requested. Additionally, players are competing with other players and not the device.

The legitimate use of a technological aid for covering means that a "one-touch" bingo game meets the statutory elements of Class II gaming under IGRA.

Modern Technology

In creating the Indian Gaming Regulatory Act, Congress anticipated what it could not foresee regarding Class II game technology. Congress intended that tribes have access to the most sophisticated Class II technology and not be shackled to outdated modes of game play.

The Senate Committee Report regarding IGRA at the time of enactment noted that:

"The Committee specifically rejects any inference that tribes should restrict Class II games to existing game sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting Class II games and the language regarding technology is designed to provide maximum flexibility." (Senate Select Committee on Indian Affairs - Committee Report, 1988 U.S.C.C.A.N. at 3079.)

The Commission's proposal to acknowledge the inclusion of one-touch games within the scope of Class II bingo provides maximum technological flexibility to tribes for a game that is consistent with IGRA's definition of bingo.

Conclusion

IGT agrees with the NIGC's proposed classification of one touch bingo as a Class II bingo game. One touch bingo games use modern technology in a manner that falls within the scope of Class II bingo as defined by IGRA. Class II gaming is a critical resource for many tribes. The recognition that one touch bingo is a Class II game will allow these tribes to realize the maximum benefit from their tribal government gaming.

IGT is concerned that some existing advisory opinions, although expressly not binding on the Commission, may cause confusion. IGT suggests that such opinions be withdrawn to the extent they are inconsistent with the revised rule acknowledging the permissibility of one touch electronic bingo.

I hope this information is helpful to the Commission.

Please feel free to contact me at (702) 669-8597 if you have any questions or would like additional information. I can also be reached by email at gayle.bauer@igt.com. Thank you in advance for your consideration.

Sincerely,



Gayle Bauer
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