



June 13, 2023

***VIA EMAIL & FIRST CLASS MAIL***

Geneieve Botella  
Executive Director  
Mescalero Apache Tribal Gaming Commission  
287 Carrizo Canyon Road Mescalero, N.M. 88340  
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**Re: Grab Bag Bingo – Game Classification Legal Advisory Opinion**

Dear Ms. Botella:

Thank you for your letter of January 26, 2023, on behalf of the Mescalero Apache Tribal Gaming Commission (MATGC), requesting an advisory game classification opinion of Grab Bag Bingo (GBB). In particular, MATGC seeks confirmation that GBB “is a Class II bingo game under IGRA.”<sup>1</sup> Our office appreciates your submission of game and visual descriptions of GBB for purposes of issuing the opinion. For the reasons stated herein, the NIGC Office of General Counsel opines that GBB when played, as described below, in a tangible, in-person format constitutes bingo, a Class II game.

***Game Description***

To play GBB, players first place wagers, in a monetary amount set by the gaming operation, with casino employees by cash, check, house-credit, or methods established by the gaming operation.<sup>2</sup> “Players may place multiple wagers simultaneously, and thus play multiple cards, within each bingo game.”<sup>3</sup> The gaming operation may permit players “to choose specific card configurations upon which to wager,” “assign card configurations of its choice to players,”<sup>4</sup> and/or allow players to retain their card(s) for subsequent games of GBB.<sup>5</sup> The cards are tangible five-spot bingo cards designated with numbers from one through ninety-nine or symbols<sup>6</sup>, which

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<sup>1</sup> Letter to Jo-Ann M. Shyloski, NIGC Of Counsel, from Geneieve Botella, Executive Director, Mescalero Apache Tribal Gaming Commission at 1 (Jan. 26, 2023).

<sup>2</sup> Grab Bag Bingo Game Description (GBB Game Description) at 4 (Jan. 10, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *See* note 1 at 1.

<sup>6</sup> Such as the sun or the moon or holiday representations (e.g., Easter eggs and bunnies).

may contain a single free spot.<sup>7</sup> Bingo balls used in the game are marked with corresponding numbers and symbols.<sup>8</sup>

Play of GBB begins when “at least two players” wager on “at least two bingo cards.”<sup>9</sup> Then, a gaming operation employee randomly draws bingo balls one at a time from a tumbler, a bingo-ball blower, or other randomizing device.<sup>10</sup> As each bingo ball is drawn, the employee verbally announces the number or symbol on the ball before the next ball is drawn.<sup>11</sup> Upon such announcements, players cover the corresponding spots on their cards and, at any time, may cover the free spot on their card.<sup>12</sup> Bingo balls are drawn and declared until a player is the first to cover all five spots on their card and call “bingo,” achieving the game-ending pattern and winning the game-ending prize<sup>13</sup>:



Gaming operations determine the game-ending prizes.<sup>14</sup> “Examples of possible prizes include fixed monetary values, variable monetary values determined as a function of the amount wagered on the GBB game,” complimentary GBB entries, meals, hotel stays, resort amenities, vacation packages, household appliances, vehicles, or recreational equipment.<sup>15</sup> Upon the first player attaining the game-ending pattern and winning the game-ending prize, GBB ends.<sup>16</sup>

However, before and simultaneously with realizing the game-ending pattern and game-ending prize, players may win interim prizes by being the first player to cover one of ten two-spot patterns on their cards and calling “bingo”:<sup>17</sup>

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<sup>7</sup> GBB Game Description at 1.

<sup>8</sup> *Id.*

<sup>9</sup> GBB Game Description at 5.

<sup>10</sup> *Id.* at 1 and 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> *Id.*

<sup>15</sup> GBB Game Description at 2.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 2 and 5.



As a consequence, in GBB, wins of each two-spot pattern and associated interim prize can occur only once.<sup>18</sup>

Each of ten interim prizes awards a “grab bag prize”: the chance to reach into one of several opaque grab bags and randomly select a voucher for a service, an item, or money.<sup>19</sup> Gaming operations “set the number of grab bags to proffer a patron, the number of unique prizes, and the nature of those various prizes.”<sup>20</sup> For example, winning an interim prize may entitle a player to select one of several monetary prizes from one of two grab bags. If the player selects the red grab bag, they have the chance of winning one monetary prize valued between forty-five and fifty-five dollars.<sup>21</sup> But if they select the black grab bag, they possess the chance of selecting either zero dollars or one hundred and fifty dollars.<sup>22</sup>



<sup>18</sup> Grab Bag Bingo (GBB), Visual description to support NIGC game-classification request at 11 (Jan. 10, 2023).

<sup>19</sup> GBB Game Description at 2-3.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.*

Interim prizes also may be services, such as a massage, or tangible items, such as meals, musical instruments, or appliances:<sup>23</sup>



Gaming operations may pause the ball draw for the interim-prize winners to select their prize from a grab-bag or wait until the game-ending prize is won for interim-prize winners to claim their grab-bag prize.<sup>24</sup> As noted, a player may win both interim-prize(s) and the game-ending prize in the same ball draw by being the first to accomplish the designated patterns for them.<sup>25</sup> GBB ends once the first player completes the game-ending pattern, calling “bingo.”<sup>26</sup> A new game of GBB can begin when at least two players wager on at least two cards.<sup>27</sup>

As an aside, players may request in-person assistance with GBB upon paying their wager. Assistance includes daubing, calling bingo, or reaching into grab-bags for prizes.<sup>28</sup> Although, GBB forbids proxy-play.<sup>29</sup> So, assistance cannot occur both for all aspects of game play, as that would constitute proxy-play.<sup>30</sup>

### ***Applicable Law: Class II gaming***

IGRA defines Class II gaming in relevant part as:

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<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> GBB Visual description to support NIGC game-classification request at 16; GBB Game Description at 5.

<sup>28</sup> GBB Game Description at 4.

<sup>29</sup> *Id.*

<sup>30</sup> Letter to Bertram E. Hirsch, Esq., from Kevin K. Washburn, NIGC General Counsel re: National Indian Bingo Game Classification Opinion at 3 (Nov. 14, 2000) (“IGRA contains no statutory prohibition on the use of agents to play the game of bingo. The bingo definition contained in IGRA requires only that the “holder of the card cover the numbers.” 25 U.S.C. 8 2703 (7)(A)(i)(II). The ‘holder’ is not defined [in the statute].”)

- (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) –
- (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
  - (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
  - (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.<sup>31</sup>

NIGC regulations further elucidate the statute, defining Class II gaming as:

- (a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:
- (1) Play for prizes with cards bearing numbers or other designations;
  - (2) Cover numbers or designations when object, 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.<sup>32</sup>

### *Analysis*

As mentioned, MATGC asks whether GBB qualifies as a Class II bingo game.<sup>33</sup>

#### **A. Does GBB contain the fundamental characteristics of bingo?**

In IGRA, neither Congress, in devising the statutory definition of bingo, nor the NIGC in its interpretation of the definition in its regulations, intended to limit bingo to its classic form.<sup>34</sup>

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<sup>31</sup> 25 U.S.C. § 2703(7)(A).

<sup>32</sup> 25 C.F.R. § 502.3.

<sup>33</sup> 25 U.S.C. § 2703(7); 25 C.F.R. § 502.3.

<sup>34</sup> *United States v. 103 Elec. Gambling Devices*, 223 F.3d 1091, 1096-97 (9th Cir. 2000) (citing 57 Fed. Reg. 12382, 12382 – “The Commission does not believe Congress intended to limit bingo to its classic form.”) (“[T]he NIGC's

Nevertheless, both IGRA and NIGC regulations specify three explicit legal requirements for a game to qualify as Class II bingo.<sup>35</sup> These criteria, as set forth above, require that: (1) the game be played for prizes with cards bearing numbers or other designations; (2) cardholders cover numbers as they are drawn; and (3) the first person to cover the designated pattern wins.<sup>36</sup> To classify a game as Class II bingo, the entire game—its primary game and its interim game(s)<sup>37</sup>—must satisfy the legal criteria for bingo.<sup>38</sup>

**i. Do players play for prizes with cards bearing numbers or other designations?**

The first criterion for bingo mandates that the game be “played for prizes . . . with cards bearing numbers or other designations.”<sup>39</sup> Although the play of bingo is not constrained to paper cards<sup>40</sup>, GBB utilizes tangible paper cards in the play of its interim games and game-ending game. Specifically, the cards are physical five-spot bingo cards designated with numbers from one through ninety-nine or symbols, which may contain a single free spot.

As for the requirement that the game be played for prizes, GBB permits gaming operations to choose the prizes awarded in the interim games and the game-ending game. Prizes may be monetary, tangible items, or services.<sup>41</sup> Monetary prizes may be fixed or variable, based on wager amounts. Examples of the other types of prizes offered include complimentary GBB entries, meals, massages, hotel stays, resort amenities, vacation packages, household appliances, vehicles, recreational equipment, or musical instruments.<sup>42</sup> Neither IGRA nor NIGC regulations define the term “prize.” However, the plain language in IGRA’s bingo definition explicitly

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interpretation of both IGRA and the NIGC's primary IGRA implementing regulation, 25 C.F.R. § 502, rests on the proposition that neither Congress nor the Commission intended to ‘limit bingo to its classic form.’”)

<sup>35</sup> *Id.* at 1096; *United States v. 162 MegaMania Gambling Devices*, 231 F.3d 713, 719 (10th Cir. 2000).

<sup>36</sup> 25 U.S.C. § 2703(7)(A); 25 C.F.R. § 502.3.

<sup>37</sup> *103 Elec. Gambling Devices*, 223 F.3d at 1098 (“Congress did not ‘intend to forbid interim prizes’ in bingo”).

<sup>38</sup> *See* Letter to Robert A. Luciano, President, Sierra Design Group, from Penny J. Coleman, NIGC Acting General Counsel re: Sierra Design Group “Mystery Bingo” Game Classification Opinion at 21 (Sept. 26, 2003) (“Consolation, secondary, or interim prizes and progressive prizes are permissible if the award of these prizes comports with the IGRA requirements for bingo including the requirement for obtaining and daubing a predetermined pattern.”); Letter to Jack Saltiel, Chief Technical Officer, Cadillac Jack, Inc., from Penny J. Coleman, NIGC Acting General Counsel re: Cadillac Jack “Triple Threat Bingo” Advisory Game Classification Opinion at 13 (Dec. 23, 2004) (“The game presented to the NIGC offers interim and consolation prizes. . . . Our previous advisory game classification opinions have accepted these prizes as part of the game provided the award of these prizes is based on the play of the bingo game.”); Letter to Jeff Hyman, Hardway Holdings, LLC, from Michael Hoenig, NIGC General Counsel re: Game Classification Opinion for O-Craps! at 9-10 (April 29, 2020) (“For bingo, IGRA and NIGC regulations do not prohibit multiple winners or interim prizes. However, each game – be it a primary game, interim game, consolation game, or some other ancillary game – must meet the Class II definition of bingo.”).

<sup>39</sup> 25 U.S.C. § 2703(7)(A)(i)(I); 25 C.F.R. § 502.3(a)(1).

<sup>40</sup> *Id.* IGRA and NIGC regulations explicitly allow the use of technologic aids in the game of bingo. 25 U.S.C. § 2703(7)(A); 25 C.F.R. § 502.3(a). Further, NIGC regulations specifically reference “electronic cards for participants in bingo games” as an example of a technologic aid. 25 C.F.R. § 502.7(c).

<sup>41</sup> Additional prizes include the title of “Bingo King or Queen,” trophies, and complimentary plays of GBB.

<sup>42</sup> GBB Game Description at 2.

embraces prizes beyond monetary ones: “the game of chance commonly known as bingo . . . which is played for prizes, including monetary prizes . . .”<sup>43</sup> The dictionary definition of *prize* is “something offered or striven for in competition or in contests of chance” or “something exceptionally desirable.”<sup>44</sup> The above-listed tangible items, services and monetary amounts come within one or both dictionary definitions, and therefore, qualify.<sup>45</sup>

The interim prizes award a “grab bag prize”: the chance to reach into one of several opaque grab bags and randomly select one voucher among several for a service, an item, or a monetary amount, including a voucher for zero dollars.<sup>46</sup> The grab bag prize meets the *prize* definition as well, because it is “something offered or striven for in competition or in contests of chance.”<sup>47</sup> Along the same lines, is the “social prize” of the winning player as the “Bingo King” or “Bingo Queen.”<sup>48</sup> Although this title may be a prize of “minimal value,” such categorization does not change the fact that it is “something offered or striven for in competition or in contests of chance,” meaning a prize. Moreover, offering prizes of minimal value does not alter the game classification of bingo under IGRA as a Class II game.<sup>49</sup>

Since GBB players play for prizes with cards bearing numbers or other designations in both the interim games and game-ending game, GBB satisfies the first bingo criterion.

**ii. Do cardholders cover numbers or other designations as they are drawn?**

The second criterion of bingo dictates that cardholders cover numbers or designations when they are drawn or electronically determined.<sup>50</sup> IGRA provides that bingo is a game “in which the holder of the card covers such numbers or designations when objects . . . are drawn or electronically determined.”<sup>51</sup> NIGC regulations interpreting this provision require that “players cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined.”<sup>52</sup> In short, IGRA states that the “holder of the card cover” and NIGC regulations further define such holder as a “player.”

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<sup>43</sup> 25 U.S.C. § 2703(7)(A)(i)(I).

<sup>44</sup> See Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/prize>

<sup>45</sup> See, e.g., *Soto v. Sky Union, LLC*, 159 F. Supp. 3d 871, 883 (N.D. Ill. 2016) (noting courts have held “that free plays of games constitute a ‘prize or reward’ because the games in question required payment to play in the first place.”).

<sup>46</sup> GBB Game Description at 2-3.

<sup>47</sup> See Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/prize>

<sup>48</sup> GBB Game Description at 2.

<sup>49</sup> See Letter to William R. Rhodes, Governor of the Gila River Community, from Penny J. Coleman, NIGC Acting General Counsel re: Class I Gaming Ordinance at 1-2 (Nov. 25, 2009) (Tribe offered small bingo games for prizes of minimal value, including door prizes and discounts. NIGC OGC opined that regardless of such prizes “IGRA specifically defines bingo as a Class II game. . . . Bingo is not a Class I game under any circumstances.”).

<sup>50</sup> 25 U.S.C. § 2703(7)(A)(i)(II); 25 C.F.R. § 502.3(a)(2).

<sup>51</sup> 25 U.S.C. § 2703(7)(A)(i)(II).

<sup>52</sup> 25 C.F.R. § 502.3(a)(2).

In both the GBB interim games and game-ending game, after a game operation employee draws specific numbers or symbols from a randomizing device and verbally calls them, players respond by covering such numbers or symbols on their cards. With these actions, GBB satisfies the second criterion of bingo.

**iii. Does the first person covering the designated pattern win?**

IGRA defines bingo as a game “...which ... is won by the first person covering a previously designated arrangement of numbers ... on such cards.”<sup>53</sup> NIGC regulations mandate that players “win the game by being the first person to cover a designated pattern on such cards.”<sup>54</sup> Both of these definitions require multiple players competing for prizes. Inherent in the language ‘first person covering,’ is an element of competition. IGRA’s language is not ‘a person,’ not ‘any person,’ not ‘every person,’ but the ‘*first* person’ - players must compete to be that ‘first person.’ Thus, the statutory language requires the game to have multiple players, and it requires them to compete with one another to be the first to cover or ‘daub’ a particular pattern.<sup>55</sup> Any pattern is sufficient “to yield a prize, as long as the pattern is ‘previously designated.’”<sup>56</sup>

Bingo also must have a winner. This “straightforward proposition” derives from the statutory and regulatory language as well: “the game is won when the first player achieves the game-winning pattern designated before the game starts.”<sup>57</sup> This “accords with common experience of the game [—] [y]ou keep drawing numbers until someone wins, and someone has to win.”<sup>58</sup> Although, “nothing in the Gaming Act or regulations prohibits more than one winner” and “the language in [IGRA] concerning the ‘first person’ to win is not limited to a straight-line game and should not be read in isolation from the traditional variations of bingo that allow interim prizes and simultaneous winners.”<sup>59</sup>

In GBB, both the interim games and game-ending game include previously designated patterns. The game-ending pattern is a straight-line of five spots on a bingo card. In the interim games, there are ten distinct two-spot patterns on the bingo card. Even if the gaming operation allows players “to choose specific card configurations upon which to wager,” meaning the numbers or symbols on the bingo card, the game-ending pattern and the ten different interim patterns remain designated prior to the start of the game.<sup>60</sup>

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<sup>53</sup> 25 U.S.C. § 2703(7)(A)(i)(III).

<sup>54</sup> 25 C.F.R. § 502.3(a)(3).

<sup>55</sup> Letter to Donald Bailey, President, Atlantic Internet Group Corp., from Penny J. Coleman, Acting General Counsel re: Quarterback Draw Football at 8 (Sept. 3, 2009).

<sup>56</sup> *103 Elec. Gambling Devices*, 223 F.3d at 1098.

<sup>57</sup> See note 53 at 7.

<sup>58</sup> *Id.*

<sup>59</sup> *162 MegaMania Gambling Devices*, 231 F.3d at 722.

<sup>60</sup> See *103 Elec. Gambling Devices*, 223 F.3d at 1098 (“the [IGRA] statutory description just quoted quite clearly permits *any* pattern to yield a prize, as long as the pattern is ‘previously designated’”); *Shakopee Mdewakanton*



To begin GBB, at least two players must place wagers, each possessing a bingo card. Next, a gaming operation employee draws bingo balls one at a time from a randomizing device, verbally announcing the number or symbol on the ball before drawing and announcing the next ball. When broadcast, players then cover corresponding spots on their cards. The first player covering all five straight-line spots on their card and calling “bingo,” wins the game-ending game. At the same time or prior to winning the game-ending game, the first player covering one of the ten two-spot patterns on their card and calling “bingo,” wins that specific interim game. Consequently, both the game-ending and interim games are won by the first player to accomplish the game-ending and each of the ten interim game patterns.

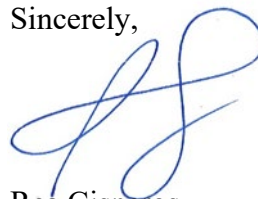
GBB satisfies the last bingo criterion. GBB possesses previously designated patterns in its interim games and game-ending game, and at least two players compete to be the first to cover the requisite patterns and call bingo to win them.

***Conclusion***

GBB constitutes Class II bingo, as the game meets the three statutory and regulatory bingo criteria. Please be advised that this legal opinion is advisory in nature only and may be superseded, reversed, revised, or reconsidered by a subsequent General Counsel. Also, this advisory legal opinion is not binding upon the NIGC Chair or the NIGC Commission, who are free to disagree with it in any action that comes before them or via the Chair’s prosecutorial discretion. In sum, this advisory legal opinion does not constitute agency action or final agency action for purposes of review in federal district court.

If you have any questions regarding this legal opinion, please contact Jo-Ann M. Shyloski, Of Counsel, at (202) 632-7003.

Sincerely,



Rea Cisneros  
Acting General Counsel

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*Sioux Cmty. v. Hope*, 798 F. Supp. 1399, 1410 (D. Minn. 1992) (“in bingo there is a winning pattern announced prior to the game (for example, five numbers that appear in a row on the game card”), *aff’d*, 16 F.3d 261 (8th Cir. 1994).