



April 26, 2024

**VIA E-MAIL**

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**Re: All American (b) (4) Game Classification Opinion**

Dear Chairman Williams and Chairman Wright:

This letter responds to requests of the Lac Vieux Desert Band of Lake Superior Chippewa Indians and the Dry Creek Rancheria Band of Pomo Indians for the National Indian Gaming Commission (“NIGC” or “Commission”) Office of General Counsel (“OGC”) to issue a game classification opinion regarding the All American (b) (4).<sup>1</sup> The All American (b) (4) is a gaming system developed by (b) (4) which consists of three distinct games: (1) (b) (4) (2) (b) (4) and (3) an (b) (4)

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**All NIGC bulletins and game classification opinions cited within this opinion are available on the NIGC’s website at <https://www.nigc.gov>.**

<sup>1</sup> See Letter from James Williams, Jr., Chairman, Lac Vieux Desert Band of Lake Superior Chippewa Indians, to Esther Dittler, Acting Associate Gen. Counsel, Nat’l Indian Gaming Comm’n Office of Gen. Counsel (Sept. 14, 2023) [hereinafter *Request for Legal Advisory Opinion*] (on file with author); Letter from Chris Wright, Chairman, Dry Creek Rancheria Band of Pomo Indians, to Esther Dittler, Acting Associate Gen. Counsel, Nat’l Indian Gaming Comm’n Office of Gen. Counsel (Oct. 25, 2023) (on file with author).

(b) (4) represented that it is “acquiring the exclusive license rights in the United States” to the game.<sup>3</sup> (b) (4) intends to lease the All American (b) (4) to tribal gaming operations nationwide so that patrons may participate in a game similar to (b) (4)<sup>4</sup>

Generally, the Tribes and (b) (4) asked me to opine as to whether: (1) the (b) (4) is a Class III game; and (2) the (b) (4) is a Class III game.<sup>5</sup> For the reasons stated herein, my opinion is: (1) the (b) (4) is a Class III game, as (b) (4) are classified as such in NIGC regulations;<sup>6</sup> (2) the (b) (4) is Class II (b) (4) and is otherwise Class III;<sup>7</sup> and (3) the (b) (4) is Class III.<sup>8</sup> With regard to the parties’ additional question regarding whether UIGEA and other Federal law preclude this game play, please see NIGC Bulletin No. 2009-3 and contact the Federal agencies responsible for administering UIGEA and other Federal laws.<sup>9</sup>

#### I. All American (b) (4) Game Description.

As mentioned above, the All American (b) (4) consists of three distinct games: (a) (b) (4); (b) (b) (4); and (c) (b) (4)

a. (b) (4)

The (b) (4) is the (b) (4) component of the All American (b) (4).<sup>10</sup> (b) (4) describes the (b) (4) as similar to a wide-area progressive gaming system except that it (b) (4)<sup>11</sup> To play, patrons

<sup>2</sup> See Memorandum from Kevin Quigley, (b) (4) Indian Gaming Business Counsel, Foley & Quigley PLC, to Nat’l Indian Gaming Comm’n Office of Gen. Counsel, *Description of (b) (4) Games Played Using (b) (4) Gaming System* (Sept. 7, 2023) [hereinafter *All American (b) (4) Game Description*] (on file with author).

<sup>3</sup> *All American (b) (4) Game Description*, *supra* note 2, at 1.

<sup>4</sup> See *id.* n.2.

<sup>5</sup> *Request for Legal Advisory Opinion*, *supra* note 1, at 2. In its original request dated September 14, 2023, the Lac Vieux Desert Band requested that OGC answer an additional question regarding the definition of “wide area progressive gaming machine.” The Dry Creek Rancheria also asked this question in its letter dated October 25, 2023. Kevin Quigley later rescinded the request on behalf of all parties. See E-mail from Kevin Quigley, (b) (4) Indian Gaming Business Counsel, Foley & Quigley PLC, to Esther Dittler, Acting Associate Gen. Counsel, Nat’l Indian Gaming Comm’n Office of Gen. Counsel (Nov. 29, 2023) (on file with author).

<sup>6</sup> See 25 C.F.R. § 502.4(d) (2024).

<sup>7</sup> See 25 U.S.C. §§ 2703(7) and 2703(8); 25 C.F.R. §§ 502.3 and 502.4 (2024); (b) (4)

<sup>8</sup> See 25 U.S.C. §§ 2703(8); 25 C.F.R. § 502.4 (2024).

<sup>9</sup> See *NIGC Bulletin No. 2009-3: The Effect of the Unlawful Internet Gambling Enforcement Act of 2006 on Wide-Area Progressive Systems and Networked, Multi-Site Bingo Games* (Mar. 9, 2009).

<sup>10</sup> See *All American (b) (4) Game Description*, *supra* note 2, at 2.

<sup>11</sup> *Id.* at 1.

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purchase (b) (4)  
The player pays for a (b) (4)  
In either instance, (b) (4)

If (b) (4) selected by the player or (b) (4), the player wins the jackpot, which consists of a minimum prize of (b) (4). If the player's (b) (4) only (b) (4) the player wins a smaller prize, as set forth in the "Prize Table" below.<sup>17</sup>

Match:	To Win:	Approx. Odds
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)
(b) (4)	(b) (4)	(b) (4)

Each time a player purchases (b) (4)  
9

(b) (4)  
20 Once the jackpot is won, a new (b) (4) (b) (4) jackpot begins.<sup>21</sup> Players with winning tickets have 180 days to claim their prizes at any

<sup>12</sup> See *id.* at 3; 25 U.S.C. § 2703(4); 25 C.F.R. § 502.12 (2024).  
<sup>13</sup> See All American (b) (4) Game Description, *supra* note 2, at 3, 10.  
<sup>14</sup> See *id.* at 3.  
<sup>15</sup> *Id.* at 2.  
<sup>16</sup> *Id.* at 4 n.12.  
<sup>17</sup> See *id.*  
<sup>18</sup> *Id.* at 2 ("(b) (4)");  
<sup>19</sup> See *id.*  
<sup>20</sup> *Id.*  
<sup>21</sup> See *id.* at 5 ("(b) (4)");

participating tribal gaming operation.<sup>22</sup>

b. (b) (4) :

In addition to (b) (4)  
[Redacted text block]

A participating tribe may purchase (b) (4) to sell at its gaming operation or may purchase (b) (4) to sell at its respective gaming operations.<sup>28</sup> Therefore, multiple tribes may sell (b) (4) at their respective gaming operations. The (b) (4) winners have 180 days to redeem their prizes at any participating tribal gaming operation.<sup>29</sup>

c. (b) (4) :

Patrons may also purchase and play (b) (4), but only on the (b) (4) (b) (4).<sup>30</sup> These (b) (4) are also sold [Redacted] and the purchaser then (b) (4)

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(b) (4)  
[Large redacted text block]

(b) (4) by touching a button on the screen.”<sup>32</sup> If the “(b) (4)  
(b) (4)  
Although (b) (4) may be played on a (b) (4)  
, patrons do not play against one another.<sup>34</sup>

## II. (b) (4) Central System (Server).

The All American (b) (4) uses (b) (4)  
Central System (“System”),<sup>35</sup> which hosts the core (b) (4) application and  
database and relies on (b) (4) to perform its functions.<sup>36</sup> (b) (4)  
(b) (4)  
40

In addition to the (b) (4)  
43

## III. Legal Background.

IGRA divides the world of Indian gaming into three classes.<sup>44</sup> Class I gaming, which is not an issue here, encompasses “social games solely for prizes of minimal value or traditional

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<sup>32</sup> *Id.* at 9.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 7.

<sup>35</sup> See All American (b) (4) Game Description, *supra* note 2, at 10.

<sup>36</sup> All American (b) (4) Game Description, *supra* note 2, at 11.

<sup>37</sup> *Id.* at 10-11.

<sup>38</sup> *Id.* at 11.

<sup>39</sup> *Id.* at 10-11.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See 25 U.S.C. §§ 2703(6), 2703(7), and 2703(8).

forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.”<sup>45</sup> Class II gaming includes:

the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)...which is played for prizes, including monetary prizes, with cards bearing numbers or other designations...in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and...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>46</sup>

IGRA defines Class III gaming as “all forms of gaming that are not class I gaming or class II gaming.”<sup>47</sup> NIGC regulations further clarify the meaning of Class III gaming to include “electronic or electromechanical facsimiles of any game of chance . . . [and] Lotteries.”<sup>48</sup>

#### IV. Analysis.

- a. The (b) (4) is a Class III game.

The Tribes and (b) (4) have inquired whether the (b) (4) is a Class III game.<sup>49</sup> NIGC regulations expressly designate (b) (4) as Class III gaming.<sup>50</sup> Moreover, IGRA’s legislative history indicates that a (b) (4)  
[REDACTED]<sup>1</sup> Although (b) (4) are classified as a Class III game, NIGC has not formally defined the term “(b) (4)”. However, OGC has previously issued game opinions concluding that certain games constitute (b) (4).<sup>52</sup>

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<sup>45</sup> 25 U.S.C. § 2703(6).

<sup>46</sup> 25 U.S.C. § 2703(7).

<sup>47</sup> 25 U.S.C. § 2703(8).

<sup>48</sup> 25 C.F.R. § 502.4 (2024).

<sup>49</sup> *Request for Legal Advisory Opinion, supra* note 1, at 2.

<sup>50</sup> 25 C.F.R. § 502.4(d) (2024). The Commission enjoyed support from “[n]umerous commenters” when adopting the regulatory definition. *See* Definitions Under the Indian Gaming Regulatory Act, 57 Fed. Reg. 12,385 (1992).

<sup>51</sup> *See* 134 Cong. Rec. S12643-01 (Sept. 15, 1988) (statement of Sen. Pete Domenici)(b) (4)  
[REDACTED]

*See also id.*(b) (4)  
[REDACTED]

<sup>52</sup>(b) (4)  
[REDACTED]

(b) (4)

[Redacted text block]

Here, in the (b) (4) [Redacted] Therefore, the (b) (4) [Redacted] is a (b) (4) [Redacted] consistent with the opinions noted above and is a Class III game consistent with 25 C.F.R. § 502.4(d).<sup>56</sup>

- b. The (b) (4) [Redacted] are a Class III game (b) (4) [Redacted]

The Tribes and (b) (4) [Redacted] have also asked whether the (b) (4) [Redacted] are a Class III game.<sup>57</sup> IGRA defines “class III gaming” as “all forms of gaming that are not class I gaming or class II gaming.”<sup>58</sup> (b) (4) [Redacted]

[Redacted text block]

(b) (4)

[Redacted text block]

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<sup>53</sup> (b) (4) [Redacted]

<sup>54</sup> (b) (4) [Redacted]

<sup>55</sup> (b) (4) [Redacted]

<sup>56</sup> (b) (4) [Redacted]

<sup>57</sup> (b) (4) [Redacted]

<sup>58</sup> (b) (4) [Redacted]

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(b) (4)

[Redacted]

Although neither IGRA nor the NIGC regulations define (b) (4)

[Redacted]

(b) (4)

[Redacted]

OGC found that, (b) (4)

[Redacted]

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<sup>61</sup> (b) (4)

[Redacted]



[REDACTED]

(b) (4)  
[REDACTED]

In the matter at hand, (b) (4)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] because they contain all the essential elements.<sup>71</sup>

Because the (b) (4)

[REDACTED] the follow-up question is whether these (b) (4) are Class II electronic aids or Class III electronic or electromechanical facsimiles.<sup>72</sup> A machine is considered an “electronic aid” if it (1) “[a]ssists a player or the playing of a game”; (2) complies with “applicable Federal communications law”; and (3) is not an “electronic or electromechanical facsimile[.]”<sup>73</sup> Electronic aids are characterized as including, but not being limited to, a machine or device that: (1) broadens the “participation levels in a common game”; (2) facilitates “communication between and among gaming sites”; or (3) allows a “player to play a game with or against other players rather than with or against a machine.”<sup>74</sup> NIGC regulations specifically include (b) (4) as an example of an electronic aid.<sup>75</sup>

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<sup>67</sup> See *id.*; *Electronic Game Cards, classification opinion, supra* note 26; (b) (4)

<sup>68</sup> NIGC Bulletin No. 99-2: *Class II Games: Punch Boards, Tip Jars, and Instant Bingo* (Aug. 18, 1999) (“This bulletin is intended to provide tribes with guidance as to the general parameters of such games.”).

<sup>69</sup> *All American (b) (4) Game Description, supra* note 2, at 7.

<sup>70</sup> *Id.*

<sup>71</sup> Compare *All American (b) (4) Game Description, supra* note 2, at 7-9 with (b) (4)

[REDACTED]

<sup>72</sup> See *All American (b) (4) Game Description, supra* note 2, at 10.

<sup>73</sup> 25 C.F.R. § 502.7(a) (2024).

<sup>74</sup> *Id.* § 502.7(b).

<sup>75</sup> *Id.* § 502.7(c).

(b) (4)

[Redacted text block]

80

(b) (4)

[Redacted text block]

c. The (b) (4) are a Class III game.

Next, the Tribes and (b) (4) have inquired as to whether the (b) (4) are a Class III game.<sup>86</sup> As stated earlier, IGRA defines “class III gaming” as “all forms of gaming that are not class I gaming or class II gaming.”<sup>87</sup> NIGC regulations define Class III gaming to include electronic or electromechanical facsimiles of any game of chance.<sup>88</sup> And the regulations further define “electronic or electromechanical facsimile” as a “game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game[.]”<sup>89</sup> Various court opinions illustrate the distinction between “electronic or electromechanical facsimiles” and “electronic aids.”<sup>90</sup>

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<sup>76</sup> (b) (4)

[Redacted footnote text]

<sup>86</sup> *Request for Legal Advisory Opinion, supra* note 1, at 2.

<sup>87</sup> 25 U.S.C. § 2703(8).

<sup>88</sup> 25 C.F.R. § 502.4 (2024).

<sup>89</sup> *Id.* § 502.8. *But see* Definitions: Electronic, Computer or Other Technologic Aid; Electronic or Electromechanical Facsimile; Game Similar to Bingo, 67 Fed. Reg. 41,167 (to be codified at 25 C.F.R. Part 502) (explaining that NIGC

(b) (4)

[Redacted text block]

The court rejected (b) (4) argument that the machine facilitated patrons’ play against one another, not the machine, finding that “any given player is faced with a self-contained machine into which he or she places money and loses it or receives winning tickets after the electronic operations are conducted.”<sup>95</sup> In crafting its opinion, the court relied on NIGC’s then-prevailing definition of “electronic aid,” which was described as a “device such as a computer, telephone, cable, television, satellite or bingo blower and that when used . . . [i]s readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile[.]”<sup>96</sup> (b) (4)

The court further noted that “it is extremely difficult for us to conceive what Congress meant by the term ‘facsimile’ if it does not include the games played by use of these machines.”<sup>98</sup>

(b) (4)

[Redacted text block]

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(b) (4)

[Redacted text block]

(b) (4)  
)  
(4)

Here, the (b) (4) come within NIGC’s definition of “electronic or electromechanical facsimile” because they are (b) (4) in an electronic or electromechanical format and they replicate the game of (b) (4) by incorporating all of the game’s characteristics.<sup>103</sup> Namely, (b) (4)

The (b) (4)  
  
  
  
All the

fundamental characteristics of a (b) (4) are electronic and contained in the machine—(b) (4)  
  
are a Class III game.<sup>107</sup>

d. UIGEA Question.

Finally, the Tribes and (b) (4) requested my opinion as to whether UIGEA or other Federal law preclude play of the All American (b) (4).<sup>108</sup> OGC does not typically opine on statutes enforced by other Federal agencies. But, in 2009, the Commission issued Bulletin No. 2009-3 to address UIGEA’s impact on wide-area progressive gaming systems and networked,

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<sup>100</sup> *Id.* at 636

(b) (4)  
)  
(4)  
)  
  
  
  
  
  
  
  
  
Electronic Game Cards, classification opinion, (b) (4)

26; *PlayAway pull tabs, classification opinion, supra* note 63.

<sup>103</sup> Compare 25 C.F.R. § 502.8 (2024) with *All American (b) (4) Game Description, supra* note 2, at 7-9.

<sup>104</sup> See *All American (b) (4) Game Description, supra* note 2, at 9.

<sup>105</sup> See *id.* at 7.

<sup>106</sup> Cf. *id.* at 8.

<sup>107</sup> See 25 C.F.R. § 502.4(b) (2024); *Cabazon Band of Mission Indians v. Nat’l Indian Gaming Comm’n (Cabazon II)*, 14 F.3d 633, 636 (D.C. Cir. 1994).

<sup>108</sup> See *Request for Legal Advisory Opinion, supra* note 1, at 2.

multi-site bingo games.<sup>109</sup> With respect to their UIGEA questions, I encourage the Tribes and WLW to consult this guidance. The NIGC refers the Tribes to the agencies responsible for interpreting and implementing other Federal law.

**V. Conclusion.**

The All American (b) (4) are a Class II game when played in the same location as bingo, meaning in the same building.<sup>110</sup> If such (b) (4) are not played in the same location as bingo, they are a Class III game.<sup>111</sup> The (b) (4) are electronic aids when used (b) (4).<sup>112</sup> The (b) (4) are a Class III game because they constitute an electronic facsimile of (b) (4).<sup>113</sup> The (b) (4) is a (b) (4) and constitutes a Class III game, as set forth in NIGC regulations.<sup>114</sup>

This opinion is advisory only and may be superseded, reversed, revised, or reconsidered by a subsequent NIGC Chair or General Counsel. The opinion does not constitute agency action or final agency action for purposes of review in Federal district court and is issued solely as a matter of courtesy.<sup>115</sup> Furthermore, if there are any changes made to the game as described, such changes might materially alter the conclusion expressed herein. Finally, by issuing this opinion, the NIGC does not speak on behalf of the U.S. Department of Justice or the U.S. Attorneys who share enforcement responsibilities with the NIGC over gambling devices.

Please contact Staff Attorney Adam Candler with any questions regarding this opinion. Adam may be contacted by e-mail at [adam.candler@nigc.gov](mailto:adam.candler@nigc.gov).

Sincerely,



Rea Cisneros  
General Counsel (Acting)

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<sup>109</sup> See generally *NIGC Bulletin No. 2009-3*, *supra* note 9.

<sup>110</sup> See 25 U.S.C. § 2703(7); 25 C.F.R. § 502.3 (2024).

<sup>111</sup> See 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4 (2024).

<sup>112</sup> See *id.* § 502.7.

<sup>113</sup> See *id.* § 502.8.

<sup>114</sup> *Id.* § 502.4(d).

<sup>115</sup> See *Kansas ex rel. Schmidt v. Zinke*, 861 F.3d 1024, 1031 (10<sup>th</sup> Cir. 2017) (“IGRA’s text, statutory structure, legislative history, and associated regulations all establish that Congress did not intend judicial review of NIGC General Counsel opinion letters.”).

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