



**PORT GAMBLE S'KLALLAM TRIBE**

31912 Little Boston Road NE • Kingston, WA 98346

August 17, 2006

Chairman Philip Hogen  
National Indian Gaming Commission  
725 17<sup>th</sup> St NW  
Washington, DC 20503

**RE: Proposed changes to the game classifications.**

Dear Chairman Hogen;

Having taken the time to review the proposed classification standards, I am writing this opinion letter to be included as part of the official record. I would like to state that I believe that the NIGC is misguided in its attempts at narrowing down the definitions on class II games. I believe that IGRA does a excellent job of determining what constitutes a class II bingo game. IGRA defines class two games with the following sentences:

*(7) (A) The term "class II gaming" means -*

*(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,*

The Port Gamble S'Klallam Tribe feel it is important to understand IGRA for both what it says and what it does not say. In subsection II IGRA states that the "holder" covers cards when objects with numbers or symbols are "drawn or electronically determined." There is no mention that the numbers must occur in sequence nor is there any ban on "auto daubing." We also note that there is no time limit set for allowing players to daub their card(s).

To us, it is quite clear that the Senate intended IGRA to allow for technological advancement to the game of bingo. In fact, a Senate Report that accompanied the bill that became IGRA indicated that:

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*“tribes should 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.”*

We do not share the confusion that the NIGC has over what constitutes a class II bingo game. The Port Gamble S’Klallam agree with the plain language understanding that if the underlying game is bingo then the whole game is class II. Simply put, no matter what the outside looks like, if the game is bingo then the machine is class II.

The difference between a technological aid which is designed to aid the play and an electromechanical facsimile must be determined. However, this distinction is not so difficult to establish. Electronic, computer or other technologic aids include, but are not limited to, machines or devices that:

1. Broaden the participation levels in a common game;
2. Facilitate communication between and among gaming sites; or
3. Allow a player to play a game with or against other players rather than with or against a machine.

With that understanding, we must look at the term facsimile. A facsimile is by definition, a copy of something else, a replica. In terms relevant to class II gaming, a facsimile must be a replica of bingo (or games similar to bingo) and not bingo itself. Therefore in order for a “bingo” game to be a facsimile, it must look like “bingo” but not actually be “bingo.” This means that any game that is bingo is therefore not a facsimile. Going by the established definition in IGRA, so long as there are prizes that players compete for and there is a card with numbers or symbols and so long as the holder of the card covers such numbers or designations when similar numbers or designations are drawn or electronically determined and the game is won by the first person to cover the symbols in a previously designated arrangement, then the game itself is bingo. And if the game is bingo, then it cannot be a facsimile of bingo.

Again, if there are players with cards, and there are actual numbers or symbols being drawn and those players must mark their cards (manually or automatically) and they compete with each other to win prizes, then that game is bingo, no matter how it is presented. No other standard is needed. How the machine looks on the outside, the size of the letters that indicate that the machine is bingo or the size of the bingo card or even how long it takes the numbers to come out before being “daubed” is irrelevant. I actually agree with what you wrote, Chairman Hogen, in your letter to the Oklahoma tribes that stated:

*“The theme of a game, and the name and graphics that go with that theme, are not the determining factors in whether a particular game can be played. The graphics and the theme are merely cosmetic features, and [the] list of possible names would be endless.”*

So clearly, it doesn't matter how the game looks, if it is bingo, it is class II. Furthermore, this understanding has been upheld in at least five circuit court of appeals decisions:

*United States v. 103 Electronic Gambling Devices*, 223 F. 3d 1091 (9<sup>th</sup> Cir. 2000)

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

*Diamond Game Enterprises v. Reno*, 230 F. 3d 365 (D.C. Cir. 2000)

*United States v. Santee Sioux Tribe of Nebraska*, 324 F. 3d 607 (8<sup>th</sup> Cir. 2003)

*Seneca-Cayuga Tribe of Oklahoma v. National Indian Gaming Commission*, 327 F. 3d 1019 (10<sup>th</sup> Cir. 2003)

These cases were based on the fact that the NIGC considered the games in question to be class III according to their definition. Yet all of these court decisions rejected the NIGC's definitions. They decided that the games in question were class II. In *United States v. 103 Electronic Gambling Devices*, the court wrote:

*"All told...the definition of bingo is broader than the government would have us read it. We decline the invitation to impose restriction on its meaning besides those Congress explicitly set forth in the Statute. Class II bingo is not limited to the game we played as children."*

Disagreeing with the court decisions of *United States v Santee Sioux* and *Seneca-Cayuga Tribe v. National Indian Gaming Commission*, the Department of Justice filed a Petition for Writ of Certiorari with the Supreme Court for each case. The Supreme Court has denied both Petitions.

The Port Gamble S'Klallam Tribe feels that the courts were correct in their reading of IGRA and do not see the need for the NIGC to continue to reclassify games that it had already approved.

I would also like to draw your attention to the economic impact of these proposals. The mission statement of the NIGC is:

*"The Commission's primary mission is to regulate gaming activities on Indian lands for the purpose of shielding Indian tribes from organized crime and other corrupting influences; to ensure that Indian tribes are the primary beneficiaries of gaming revenue; and to assure that gaming is conducted fairly and honestly by both operators and players."*

The most strongly held value for the Port Gamble S'Klallam Tribe is the notion of self-determination. Should the changes proposed by the NIGC go through, then many tribes will be unduly injured economically. At the very least the opportunity to grow and to negotiate with the State Gambling Commission will be hindered here in Washington, but we still fare better than the Tribes that rely solely on class II gaming. Those tribes might even face bankruptcy.

Chairman Hogen, you know of the importance of Indian Gaming to the tribes across the country. In an address you gave to the Senate Committee on Indian Affairs given September 21, 2005 you said:

*“In the years since the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., was passed, Indian gaming has grown exponentially from \$100 million in revenue to over \$19.4 billion in 2004. Approximately 80% of this revenue comes from the higher stakes class III gaming. Revenues from Indian gaming have built roads, schools and health centers on reservations across the country, and greatly reduced reservation unemployment in many areas.”*

The NIGC website states that for the year 2005 tribes earned \$22,629,575,000 in revenues. Using the figure of 20% you attribute to class II gaming that would still leave more than 4.4 billion dollars in revenue that must be taken into account. And more than just directly affecting the tribe and its ability to function, there is the economic circle of each person employed both directly and indirectly by the gaming of that tribe.

This circle must take into account the life of each employee as they purchase goods and services in their communities. Moving further out in our economic circle, we must take into account the businesses that have grown due to the tribal casinos including but not limited the lending institutions that the tribes still owe. Should a tribe suddenly have all of its machines determined to be illegal and it cannot function, who will pay the loans that the tribe still owes? Furthermore if the NIGC can determine a game to be illegal at any time in the future, what manufacturer will want to invest in such an unstable market? To conclude, a true study of the economic impact must be conducted and published before any proposals can be finalized.

I do thank you for the time you have allowed for me to voice our concerns. I hope that you appreciate the time, thought, and effort we as a tribe have put into this discussion. I also hope that this discussion will be ongoing until the concerns of the tribes can be properly addressed.

Thank you,



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