

NATIONAL INDIAN GAMING COMMISSION BULLETIN

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Subject: All Banking Card Games Fall Within Class III Gaming

The National Indian Gaming Commission (NIGC) was asked recently whether a player banked version of blackjack (21) falls within class II or class III gaming under the Indian Gaming Regulatory Act (IGRA). After a thorough legal review, the NIGC has concluded that all banking card games, including card games banked by the gaming operation or by a player, fall within class III gaming. Because many tribes are conducting player banked card games, including player banked blackjack, as part of their class II gaming operations, the NIGC is issuing this bulletin.

In player banked blackjack (21), players are playing against a player bank. The banker/player has a mathematical percentage advantage over the other players similar to the advantage the gaming operation has in traditional blackjack. The tribal gaming operation does not participate in, or have any interest in, the outcome of the game. The gaming operation makes money by collecting an ante from each player per hand. A player takes on the role of banker, collecting all losses and paying all winnings.

In blackjack (21), as traditionally played, the gaming operation acts as the bank or banker. Apparently, some tribes are of the view that if the gaming operation does not bank the game, the game is a nonbanking card game and thus falls within class II gaming.

All banking card games, including three which are specifically enumerated, are excluded from class II gaming in the IGRA. Those specifically enumerated card games are baccarat, chemin de fer, and blackjack (21). See 25 U.S.C. § 2703(7)(B)(i). Baccarat and blackjack (21) are card games banked by the gaming operation, whereas chemin de fer is a player banked version of baccarat. See, John Scarne, *Scarne's New Complete Guide to Gambling*, 342, 459-460 (1986); Albert H. Moorehead, et al., *The New Complete Hoyle*, 513, 541-548 (1991).

NIGC regulations define class II card games as nonbanking card games. See 25 C.F.R. § 502.3(c). Class III games are defined as all games which are not class I or class II and includes house banked baccarat, chemin de fer, and blackjack (21). See 25 C.F.R. § 502.4.

Banking card games are classified as class III in the IGRA. The IGRA states that "[t]he term class II gaming does not include any banking card games, including baccarat, chemin de fer, or

blackjack (21) ..." 25 U.S.C. § 2703(7)(B)(i). The term class III gaming means "all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C. § 2703(8).

By excluding banking card games from class II gaming, the only card games Congress intended to fall within class II are nonbanking card games. As was previously discussed, chemin de fer is a player banked game, whereas baccarat and blackjack (21) are banked by the gaming operation. Therefore, by express language, as well as enumerating these specific card games, Congress clearly intended to exclude from class II gaming those card games banked by either the player or the gaming operation.

Because the statutory language is clear and unambiguous, there is no need to look to the legislative history of the IGRA. United States v. Taylor, 487 U.S. 326, 344-346 (1988).

In the view of the Commission, non-banking card games are games where players play against each other. The game of poker would be the typical example. It has been asserted that in player banked blackjack, players are playing against each other. This is incorrect. In player banked blackjack, the players are not playing against each other. They are playing against a banker who happens to be another player. This player banker has a percentage or odds advantage over all other players. This advantage is a fundamental characteristic of a banking game.

To further clarify the distinction between class II gaming and class III gaming, the NIGC defined "house banking" to mean "any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win." 25 C.F.R. § 502.11. The NIGC adopted the commonly understood definition of a banking game. In the view of the NIGC, the reference to the "house" is not limited to the gaming operation, but refers to anyone who is a participant in the game, takes on all players, collects from the losers, and pays the winners. However, the NIGC recognizes that the reference to the "house" may be confusing; therefore, the NIGC intends to amend sections 502.4 and 502.11 accordingly.

For further information, please contact the NIGC legal staff at (202) 632-7003.