




Regulation of Class I Gaming

- Section 2710(a)(1) excludes Class I gaming from IGRA
- Class I gaming remains “within the exclusive jurisdiction of the Indian tribes” provided the gaming occurs on Indian lands

2

Class II Gaming

- (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, and



<https://youtu.be/Ddl7QaeH7I?si=QnRwKN5hlgXZKPP1>

3

Class II Gaming

- ii) card games that—
- (i) are explicitly authorized by the laws of the State, or
- (ii) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.
- (B) The term "class II gaming" does not include—
- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

4

Class III Gaming

- The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

5

Regulation of Class III Gaming

- Class III gaming can only be conducted on Indian lands if
 - Authorized by ordinance or resolution
 - Adopted by the tribe's governing body
 - Approved by the NIGC Chairman
 - Located in a state that permits gaming for any purpose
 - Conduct gaming in accordance with the Tribal-State compact

6

Regulation of Class III Gaming

- Tribal ordinance or resolution
- Must detail the same elements as a Class II ordinance
- Approved by the NIGC Chairman unless
 - Chair determines that it was not properly adopted by the tribe's governing body
 - Governing body was "significantly and unduly influenced" by unsuitable people

7

Regulation of Class III Gaming

- State permits gaming in some form
 - One finding of IGRA states tribal gaming can occur "within a State which does not, as a matter of criminal law and public policy, prohibit gaming activity."
- How broad is gaming activity
- Cabazon: if the state permits some form of gaming (e.g., horse racing), the tribe can conduct full gaming.
- Lac Du Flambeau v. Wisconsin: Games consisting of the common elements of consideration, chance and prize are sufficient.

8

Regulation of Class III Gaming

- Tribal-State Compacting Process
 - Tribe requests the State to enter into negotiations
 - State must negotiate in "good faith"* (Seminole v. Florida)
 - The Compact shall provide for
 - Application of state or tribal criminal and civil laws
 - Allocation of criminal and civil jurisdiction between the state and the tribe
 - State assessment to costs incurred
 - Taxation by the tribe at a rate comparable to the state's tax rate
 - Remedies for breach
 - Standards of operations, licensing and maintenance
 - Any other subject "directly related" to the gaming operations
- Compact approved by the Secretary of Interior unless violated IGRA or other federal law

9

Regulation of Class III Gaming

- Taxation
 - The state or any political subdivision may not tax, charge or assess a tribe for Class III gaming
- Exclusivity Payments
 - Tribe agrees to pay a percentage of gaming revenue in return for state not permitting any non-Indian Gaming with a proscribed area
 - Lytton Rancheria of California agreed to pay the State 25% of net revenue to have a 35 mile zone of exclusivity

10

Regulation of Class III Gaming

- Tribal regulation of Class III gaming
- IGRA does not impair the right of the tribe to regulate gaming concurrently with the state
- Has to be to at least the standards detailed in the Compact
- Tribal gaming commission
- Tribal gaming regulations
- Licensing of management and employees
- Auditing of casino operations
- Law enforcement efforts

11

Regulation of Class III Gaming

- State fails to negotiate in good faith or enter a compact
- (Seminole v. Florida)
 - U.S. District Court has jurisdiction
 - Tribe may commence an action 180 days after the tribe requested negotiations
 - The burden is on the state to prove it is acting in good faith
 - Court examines the State's conduct and demands

12

Regulation of Class III Gaming

- 25 CFR 293.1 et. seq.
- Regulatory work around for Class III Gaming when a State asserts sovereign immunity.

13

Regulation of Class III Gaming

• 25 CFR 293.3 WHEN MAY AN INDIAN TRIBE ASK THE SECRETARY TO ISSUE CLASS III GAMING PROCEDURES?

• An Indian tribe may ask the Secretary to issue Class III gaming procedures when the following steps have taken place:

- (a) The Indian tribe submitted a written request to the State to enter into negotiations to establish a Tribal-State compact governing the conduct of Class III gaming activities;
- (b) The State and the Indian tribe failed to negotiate a compact 180 days after the State received the Indian tribe's request;
- (c) The Indian tribe initiated a cause of action in Federal district court against the State alleging that the State did not respond, or did not respond in good faith, to the request of the Indian tribe to negotiate such a compact;
- (d) The State raised an Eleventh Amendment defense to the tribal action; and
- (e) The Federal district court dismissed the action due to the State's sovereign immunity

14

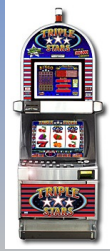
Class II vs. Class III Devices

- Why important?
- Class II gaming is permitted if
 - Tribe adopts ordinance
 - State permits some form of gaming
- No state compact is necessary
- Class II is defined as bingo or lotto games

15

Class II vs. Class III Devices

- Class II or Class III Device?
- Class II allows for "electronic, computer or other technologic aids"
- And this is a Class II device that plays a bingo game



Class II vs. Class III Devices



17

Class II vs. Class III Devices

- DESCRIPTION OF QUICK SHOT BINGO
- Quick Shot Bingo is played as follows:
- Once a week, a person at Gold Eagle Hall draws five "B" numbers, five "I" numbers, five "N" numbers, five "G" numbers, and five "O" numbers from a bingo blower. The
- numbers are then posted on bingo number boards located at several individually owned facilities located on the reservation. To play the game, a customer purchases a Quick Shot
- Bingo card for \$.50 each. The customer compares the numbers on the card to the numbers that have been drawn, covering those numbers on the card that correspond to the
- posted numbers. If the covered numbers form a previously designated arrangement of numbers, the customer receives a predetermined monetary prize.

18

Class II vs. Class III Devices

- QUICK SHOT BINGO
-
- CLASS II or CLASS III?

• <http://www.nigc.gov/images/uploads/game-opinions/quickshotbingo.pdf>

19

Class II vs. Class III Devices

- QUICK SHOT BINGO
-
- As described, the Quick Shot Bingo game does not meet the regulatory definition of bingo for several reasons. First, the players do not cover the numbers when objects similarly numbered are drawn. Instead, all the winning numbers are drawn and posted on the boards before the players buy their cards. The players then compare and cover the numbers on their cards with the posted numbers to see if they won. Also, as it is being played in some instances, the game is not won by the first person to cover a previously designated arrangement. Rather the game may be played for a set period of time, such as a week. The possible impact of such variations is that in the first instance, no one would win the game, and in the later instance, people could continue to play after someone else had already won the larger prize. Therefore, Quick Shot bingo is not bingo under
- 25 C.F.R. 502.3.

20

Class II vs. Class III Devices

- 25 CFR § 502.3 Class II gaming.
- *Class II gaming* means:
- (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;
- (b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and [other games similar to bingo](#);

21

NIGC Classification Opinions

<http://www.nigc.gov/general-counsel/game-classification-opinions>

22

Gaming on Indian Lands

- IGRA permits gaming on "Indian lands"
- Distinction pre- and post-IGRA
- IGRA defines Indian lands as
 - All lands within the limits of the Indian reservation
 - Any lands held in trust by the US Government for the benefit of the tribe and over which the tribe exercises governmental authority

23

Gaming on Indian Lands

- Lands acquired post-IGRA
 - General prohibition against allowing IGRA-gaming on lands acquired in trust for the benefit of the tribe after October 17, 1988 (date of IGRA)
 - Exceptions
 - Such land is within or contiguous to the boundaries of the reservation (as of October 17, 1998)
 - Tribe had no reservations as of the date of IGRA and the land is located within last recognized reservation within the state the tribe is currently located in (Oklahoma)

24

Gaming on Indian Lands

- Lands acquired post-IGRA
 - Exceptions (con't)
 - Secretary determines gaming on newly acquired land would benefit tribe and not be detrimental to the community and the state's Governor concurs (no good faith required)
 - Lands taken into trust in settlement of a land claim
 - Lands taken into trust for a initial reservation of the tribe acknowledged by the Secretary
 - Lands taken into trust as restoration of lands for a tribe that has been restored to federal recognition

Gaming on Indian Lands

- The Menominee Tribe with investors seeks to open a casino in Kenosha, Wisconsin.
- Kenosha is about 50 miles from Chicago which has about 9.5 million people in the metropolitan area.
- Kenosha is about 45 miles from Milwaukee which has about 1.7 million people in the metropolitan area.

Gaming on Indian Lands

- The proposed casino will be located at an unprofitable but currently operating greyhound race track
- The closest current Menominee tribal lands are reportedly more than 170 miles from the greyhound track.

Gaming on Indian Lands



Gaming on Indian Lands

- **Sec. 2719. Gaming on lands acquired after October 17, 1988**
 - (a) Prohibition on lands acquired in trust by Secretary. Except as provided in subsection (b), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act [enacted Oct. 17, 1988] unless—
 - ...
- **(b) Exceptions.**
 - (1) Subsection (a) will not apply when—
 - (A) the secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the secretary's determination; or

Gaming on Indian Lands

- What happened....

Gaming on Indian Lands

- Lands acquired post-IGRA
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Management Contracts

- Management Contracts
 - IGRA requires NIGC approval before a tribe can enter into a management contract for the operation and management of Class II or III gaming activities
 - Contract must provide
 - Accounting procedures and financial reports for the tribe
 - Tribal access to daily operations
 - Minimum guaranteed payments to the tribe before reimbursement of development costs
 - Ceiling on development and construction costs
 - Term not to exceed 5 (or 7) years

Management Contracts

- Management Contracts
 - Management fees generally cannot exceed 30% of net gaming revenues
 - NIGC Chair has 180 days (with 1-90 day extension) to approve the contract
 - Such contract is disapproved if, among others
 - Felony or gaming offense
 - Make false statements to the NIGC or tribe
 - Prior activities, criminal record or associations pose a threat to the public interest

Consulting Agreement

- Consulting Agreement
 - No NIGC approval require
 - No IGRA mandated elements

Management vs. Consulting Contracts

- NIGC issued bulletins to address consulting agreements that were truly management agreements
 - Consulting agreements should
 - Finite task/assignment
 - Dates for completion
 - Compensation on a hourly, daily or fixed rate
- NIGC provides an 'advance determination' process to assist in determining whether the proposed agreement is a management or consulting contract
