



Memorandum

To: Alan Fedman, Director  
Division of Enforcement

From: Penny J. Coleman, Acting General Counsel *PJC*

Re: Card Games at Seneca Nation of New York Class II Bingo Halls

Date: April 4, 2003

You requested an opinion on whether the Player Pooled Blackjack at the Seneca Nation of Indians Gaming & Entertainment Center located on the Cattaraugus Reservation constitutes a class II or class III game. The Indian Gaming Regulatory Act (IGRA) specifically excludes blackjack from class II games and is therefore a class III game. Based on the information provided, including table games standards and internal controls, the game as played at the Entertainment Center is blackjack and is a class III game.

**DESCRIPTION OF THE GAME**

According to the rules supplied by the casino, this blackjack game is fundamentally the same as traditional blackjack. The rules do not specify the minimum number of players; however, the maximum number of players at a table is seven. Players are required to place an administrative fee in the proper circle prior to receiving any cards. This administrative fee is placed in the left drop box. Players buy chips at the table, and the money from this is placed in a right drop box.

The tables are similar to blackjack tables except there is a small circle above and off to the right of the wagering circle where players place their administrative fee. The administrative fee is based on the amount of the wager.

Players make a wager by placing gaming chips in the appropriate space on the table. The maximum wager allowed is \$200 before double downs or splits. Cards are dealt from a multi-deck shoe located to the left of the dealer. The object of the game is to beat the dealer's hand without exceeding twenty-one; a hand of "Blackjack," which is an initial deal of an ace and a card valued at ten, is an automatic winner; the house deals; players play against the house and not each other; the house has the potential to win or lose; and the bank, in the form of a pool, is used to pay winners. If a player receives a combination of cards in single hand of 22 or more then the dealer immediately picks up his losing bet and places it in the game bankroll.

The players' pool was established by the game room providing seed funds to the table games. These funds are repaid to the operation from the pool prior to any tournament play commencing. If the pool runs out of money during play, the gaming operation replenishes the pool. The casino provides a dealer and each player plays against the "pool's" hand. Table win is recorded to an "Accrued Progressive BJ Tournament" accrual account. After 30 days, the balance in the accrual account is the basis for the prizes to be won in the tournament. Players who accumulate six hours of play in a month are eligible for the Progressive Blackjack Tournament. The tournament will consist of rounds that will continue until 6 players are left. Prize money for the tournament will be distributed to the top 4 players. According to the games standards provided by the casino, 100 percent of the accrual account will be utilized.

### INDIAN GAMING REGULATORY ACT

IGRA creates three classes of gaming that differ in the degree of tribal, state, and federal oversight. Class I gaming consists of "social games [played] solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6). Class II gaming includes bingo, related activities, and certain non-banking card games. 25 U.S.C. § 2703(7)(A). Class III gaming is defined residually; it includes "all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C. § 2703(8).

IGRA specifically excludes any banking card games from classification as a class II game. 25 U.S.C. § 2703(7)(B). 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)(Emphasis added). By excluding banking card games from class II gaming, the only card games Congress intended to fall within class II are non-banking card games.

Furthermore, the NIGC regulations define "house banking" as:

House banking game means 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. A "banked" card game is not limited to the gaming operation bank, but refers to anyone who is a participant in the game, takes on all players, collects from all losers, and pays all winners.<sup>1</sup> Further, non-banking card games are games where players play against each other. See NIGC Bulletin No. 95-1 (April 10, 1995).

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<sup>1</sup> We have previously opined that non-banking card games are games where players play against each other. 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. See NIGC

## ANALYSIS

Under IGRA, Class II games do not include any banking card games. The game of blackjack being played at the Seneca facility is a banked card game because the house created the pool, the house maintains control of and replenishes the pool if it is depleted, and players are playing against the house instead of each other.

The seed money for the player pool is supplied by the gaming facility. This illustrates that the tribe created the "pool" that operates as the "bank." If the gaming facility is loaning or giving money to start the pool, then the gaming facility is banking the game.

The gaming facility maintains control of the pool and if the pool is depleted the facility will re-seed the pool. The facility provides a dealer that plays the pool's hand, much like in traditional blackjack. The result of such a close relationship between the players' pool and the tribe's casino accounts is that the Tribe is banking the game.

When applying the NIGC's regulatory definition of "house banking" to the Seneca Nation's blackjack, it is clear that the game is a banking game. Players play against the dealer who is playing the pool's hand. If a player "busts" (goes over twenty-one), the dealer does not wait to see whether he will also bust and tie at a count above 21. The dealer rakes in the bet and closes that transaction. The player has lost, even though his count may later tie the dealer's. The dealer has a percentage or odds advantage over all other players. The dealer pays all winners and collects from all losers. The players are not playing against each other.

## CONCLUSION

All banking card games, including blackjack, are excluded from class II gaming in the IGRA. The card game played at the Entertainment Center is a banked card game and is therefore a class III game.

If you have any further questions please contact John Hay.