



ITG News



Keeping First Nations Informed

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Proposed Regulations Expand the Use of Electronic Payment System and Discontinue Paper Coupons Next Year

Consistent with a Financial Management Service initiative announced in April of this year, the IRS issued proposed regulations to significantly increase the number of electronic transactions between taxpayers and the federal government.

The proposed regulations (REG 153340-09) would eliminate the rules for making federal tax deposits by paper coupon because the paper coupon system will no longer be maintained by the Treasury Department after Dec. 31, 2010. The proposed regulations generally maintain existing rules for depositing federal taxes through the Electronic Federal Tax Payment System (EFTPS).

Using EFTPS to make federal tax deposits provides substantial benefits to both taxpayers and the government. EFTPS users can make tax payments 24 hours a day, seven days a week from home or the office.

Deposits can be made online with a computer or by telephone. EFTPS also significantly reduces payment-related errors that could result in a penalty. The system helps taxpayers schedule dates to make payments even when they are out of town or on vacation when a payment is due. EFTPS business users can schedule payments up to 120 days in advance of the desired payment date. Information on EFTPS, including how to enroll, can be found at www.eftps.gov or by calling EFTPS Customer Service at 1-800-555-4477.

Some businesses paying a minimal amount of tax may make their payments with the related tax return, instead of using EFTPS. More details regarding taxes required to be deposited using EFTPS, dollar thresholds and other specific requirements are in the proposed regulations.



paper coupon system no longer maintained by the Treasury Department

IN THIS ISSUE

Discontinue Paper Coupons	1
Employee vs. Independent Contractor-Seven Tips	2
Advanced Wages or Loan Reporting	3
Excise Tax Claims	4
Message from the Director	5
Reporting Slot and Player's Club Points	6
Webinar on tanning tax	6
FinCEN Guidance on BSA Compliance Program & Risk Assessment	7
ITG Contacts	
Small Business Calendars	8
Losing Tax Exempt Status	
Tax News for You - Unemployed Taxpayers	9
EFTPS Scam	10
Tax Calendar for the 4th Quarter of 2010	11/12

Customer Satisfaction Survey is Coming

As a reminder, our annual Customer Satisfaction Survey will be in the mail in the near future. The purpose of the survey is to obtain feedback from our customers that will allow us to measure customer satisfaction with our products and services, and to determine areas where we need to effect operational changes.



Employee vs. Independent Contractor—Seven Tips

As a tribe, subdivision or entity owned by the tribe, you may hire people as independent contractors or as employees. There are rules that will help you determine how to classify the people you hire. This will affect how much you pay in taxes, whether you need to withhold from your workers paychecks and what tax documents you need to file.

Here are seven things every business should know about hiring people as independent contractors versus hiring them as employees.

1. The IRS uses three characteristics to determine the relationship between businesses and workers:
 - Behavior Control covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means.
 - Financial Control covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job.
 - Type of Relationship factor relates to how the workers and the business owner perceive their relationship.
2. If you have the right to control or direct not only what is to be done, but also how it is to be done, then your workers are most likely employees.
3. If you can direct or control only the result of the work done—and not the means and methods of accomplishing the result—then your workers are probably independent contractors.
4. Employers who misclassify workers as independent contractors can end up with substantial tax bills. Additionally, they can face penalties for failing to pay employment taxes and for failing to file required tax forms.
5. Workers can avoid higher tax bills and lost benefits if they know their proper status.
6. Both employers and workers can ask the IRS to make a determination on whether a specific individual is an independent contractor or an employee by filing a [Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding](#), with the IRS.
7. You can learn more about the critical determination of worker's status as an Independent Contractor or Employee at www.irs.gov by selecting the Small Business link. Additional resources include IRS [Publication 15-A, Employer's Supplemental Tax Guide](#), [Publication 1779, Independent Contractor or Employee](#), and [Publication 1976, Do You Qualify for Relief under Section 530?](#) These publications and Form SS-8 are available on the IRS website or by calling the IRS at 800-829-3676 (800-TAX-FORM).

To add your name or e-mail address to our mailing list, please contact us via e-mail at Carole.M.Oller@irs.gov or call Carole Oller at (605) 341-1710



How to Report Advanced Wages or a Loan

Is the money you are giving to your employees between paydays an advance on wages or a loan? If it is an advance on wages, are you reporting it properly? Most employers treat that money as an advance on unearned salary and will not include it in income, but that may not necessarily be correct. Revenue Rulings 68-239 and 68-337 discuss advances as wages and advances as loans.

Revenue Ruling 68-239 addresses the question of the status of advanced payments actually or constructively made by the employer to the employees, for Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at the Source on Wages (federal income tax withholding). According to this revenue ruling, if an employer advances payroll payments to an employee with the obligation that the employee will perform services in advance, that advance is considered "wages" for Federal employment tax purposes at the time of payment, not when the employee performs the services. The main reasoning behind this ruling is because if an employee receives an advance on wages, subsequently quits or is fired and is not obligated to pay that advance back, that amount would not have been included in income because the employee never performed a service.

Revenue Ruling 68-337 addresses the same question, however the circumstances are different. According to this revenue ruling, if an employer advances payroll payments to an employee with the obligation that the employee will perform services for the advance and the employee must acknowledge that advance by signing either a bona fide note or loan. That advance is considered to be a loan and not included in wages until the employee performs services which pays off the note or loan. The main difference is this ruling is the employer makes the employee sign a bona fide note or loan, so if that employee quits or is terminated, he or she is still liable for the note/loan and will be obligated to pay in cash or have it withheld from their final "net" paycheck. A bona fide note or loan should include the characteristics of a note/loan made at arm's length; there should be a stated interest rate, a specified length of time for repayment, and a consequence for failure to repay.

Here is an example: This Tribal Employer has a semimonthly pay period (paydays are on the 1st and 15th of the month). Employee John comes in on the 8th of the month and requests an advance of \$200.00 on his wages. According to Revenue Ruling 68-239, the \$200.00 advanced to John is included in income at the time of payment on the 8th of the month and there must be FICA and federal income tax withheld from that payment. The advance check amount will be less the FICA and income tax withholding amount, so his check could be around \$180.00, depending upon his individual circumstances.

Now let's say the same facts, except Tribal Employer makes John sign a note or loan document for the \$200.00 advance. According to Revenue Ruling 68-337, that amount is not income to John on the 8th of the month because he signed a bona fide note. He will receive a check for the full \$200.00, it will not be included in his income and he will owe the full amount.



The bottom line, if you are advancing wages to your employees and not including it in income nor are you deducting the employees share of FICA or federal income tax withholding amount at the time of the advance, you are not reporting the advances correctly.



Excise Tax Claims for Essential Governmental Functions

Excise tax on gasoline and diesel fuel is paid when purchased at the pump or from the supplier, ultimately the taxes are paid by the end user. Recognized Tribal governments are exempt from paying excise taxes on special fuels, in the same manner as state and local governments, when those fuels are used to carry on "essential governmental functions".

According to Internal Revenue Code Section 7871(e) the term essential governmental function "does not include any function not customarily performed by state and local governments with general taxing powers". [Revenue Ruling 94-81](#) provides some examples of what is and what is not "essential governmental function". Rev. Rul. 94-81 also specifically states, "there is no exemption that would allow a state (or an Indian tribal government) to purchase fuel tax free for resale to consumers".

In general, the above provisions will apply to the Tribal administration, housing authority, health clinics, police, fire, schools, emergency, economic development, and similar "governmental functions". They do not apply to casinos or other business entities not normally associated with a state or local government. Since we all know that Tribes are conducting "essential governmental functions", how do they not pay the fuel tax or apply for a refund of the taxes they paid?

To purchase diesel fuel tax free, there are two options available to the Tribe; complete a certificate of exemption ([Certificate P](#)) and file it with the registered vendor or complete a certificate of exemption ([Certificate R](#)) and file it with the registered credit card issuer. There is no provision to claim a fuel tax credit for taxed diesel fuel used by the Tribe for essential government functions. Tribal governments cannot file fuel tax credits for diesel fuel. Diesel fuel should be purchased free of federal excise tax using the exemption mentioned earlier. If the Tribe purchases diesel fuel with a credit card and the credit card issuer is not registered, the credit card issuer must collect the tax from the Tribe and the Tribe may file its own claim for the refund of Federal Excise Tax. In this situation, [Form 8849, Claim for Refund of Excise Taxes](#), can be filed quarterly when the amount claimed reaches at least \$250 or in the 4th quarter of the Tribe's fiscal year regardless of the amount claimed.

Dyed Diesel fuel and Kerosene are not taxed, therefore no exemption is eligible.

To purchase gasoline tax free, there are two options available to the Tribe; complete a certificate of exemption ([Certificate M](#)), file it with and purchase your gasoline from the wholesale gasoline distributor or complete a certificate of exemption ([Certificate R](#)) and file it with the registered credit card issuer. If the Tribe purchases gasoline with a credit card and the credit card issuer is not registered, the credit card issuer must collect the tax from the Tribe and the Tribe may file its own claim for the refund of Federal Excise Tax. If gasoline is purchased tax-paid for essential government functions, a claim can be filed using [Form 8849, Claim for Refund of Excise Taxes](#). The Form 8849 can be filed quarterly when the amount claimed reaches at least \$750 or in the 4th quarter of the Tribe's fiscal year. Include [Schedule 1, Nontaxable Use of Fuels](#), and follow the instructions for State and Local Governments. Only the gasoline used for essential governmental services is eligible for the credit. **Casino vehicles do not qualify for the credit.**

To find the certificates mentioned above, see [Publication 510, Excise Taxes](#). For additional information, see our [ITG Excise Tax web site](#), [Revenue Ruling 94-81](#) and [Form 8849, Claim for Refund of Excise Taxes](#), or contact your local ITG Specialist.



Message from the Director

Fall is here and for those of us at the Internal Revenue Service, it is the beginning of a new fiscal year. We will soon be issuing our FY2011 Work Plan, sending out a new Customer Satisfaction Survey, and beginning a new round of training for Tribes. Fall is always a busy time in ITG!

In the coming fiscal year, I expect ITG to try some new ways of communicating with the Tribes. For example, later this fiscal year we will hold our first ever webinar! We also plan to update our publications, make subscribing to this newsletter easier, and enhance our website. We are seeking to improve our communication with you and make it easier for you to get the information you need to administer your tribe's tax matters. Please suggest things that you think would be useful. We will listen.

ITG will continue to hold listening meetings as part of our commitment to consult with tribes. We will resume holding 4 regional meetings per year and will announce the schedule soon. These sessions are a good chance for us to hear from you and to discuss areas of concern, answer questions you may have, and reaffirm our government-to-government relationship. We will also be participating in national and regional tribal meetings such as NAFOA, NITA, and NCAI to continue to provide current information on federal tax matters. Invite us and we will come to your regional meetings as well.

Finally, we will be using our website to continue to keep you up to date on matters related to implementing the Affordable Care Act and other legislation which impacts tribes and tribal members. As you know, there are many consultation efforts underway across multiple federal agencies on these matters. We know they are important to you and we will make every effort to get information to you quickly.

Christie Jacobs

Topics Solicited

The ITG Newsletter staff encourages the submission of technical and procedural topics to be considered for an article. The goal is to support and educate tribal employees by disseminating information that promotes compliance with tax law requirements and regulations. Simply email your ideas to carole.m.oller@irs.gov to be considered in the newsletter.



Casino Information Return Reporting: Bonus Slot Points and Player Club Points

Restricted or "Bonus Slot" Points:

Casinos have various names for the reporting of the restricted points being awarded. At some locations the points are called "Bonus Slot Points" at other casinos they are referred to as restricted points. The restricted player club points are typically awarded to patrons through various promotions offered by the casino. These restricted player club points are restricted by the casino and cannot be converted by the patron into cash or cash equivalents. These restricted points can only be used by the patron for additional play at the slot machines. These restricted points are not considered cash or cash equivalents. Since the restricted points are not cash or cash equivalents, these restricted points are not reportable on [Form W-2G, Certain Gambling Income](#), or [Form 1099-MISC, Miscellaneous Income](#), these are classified as non-taxable rebates.

However, if the patron is allowed to convert these restricted points into cash or cash equivalents; then the restricted points are not considered restricted. These points are reportable on Form W-2G at the time the points were won or awarded.

Player Club Points:

Player Club points are typically tracked on a card issued to the patron. The player club card when inserted into a slot machine, tracks the customer's play. Unrestricted player club points are typically calculated based on the amount of play on the patron's player tracking card and are based on the amount of coin-in-play. Unrestricted player club points are credited in accordance with a preset ratio (e.g. one point for every \$15 of coin-in). When sufficient credits are accumulated, the patron may redeem them for various rewards. The industry's term for these payments made by slot clubs is "slot scrip". The vast majority of accumulated credits are typically redeemed for small rewards with values below the threshold for issuance of Form W-2G or Form 1099-MISC.

In Letter Ruling (LTR) 93-40-007, the Service was presented with the question of whether an airline was required to file information returns under IRC Section 6041 for redemptions issued to members of its frequent flyer program. The Service determined that the airline was not obligated to file such information returns.

It is the position of the IRS that slot clubs are analogous to frequent flyer programs, therefore it is highly probable that slot club rewards will be similarly treated. For coin-in systems, the amount of the slot scrip earned for playing is prorated and known in advance; therefore slot scrip may reasonably be classified as a non-taxable rebate. If slot script is not income to slot club recipients, then the

Webinar on the Indoor Tanning Excise Tax

On October 6, 2010 (2:00 PM ET), the IRS will have a FREE webinar on the new Indoor Tanning Excise Tax. The webinar will cover: the new regulations, who is liable, collecting and remitting the tax, the tax forms, and more. Additional information can be found at <http://www.irs.gov/businesses/small/article/0,,id=166814,00.html#2>

Register on-line at: <http://www.visualwebcaster.com/IRS/72128/reg.asp?id=72128>



FinCEN Issues Guidance regarding BSA Compliance Program & Risk Assessment

The Bank Secrecy Act requires casinos to develop and implement compliance programs tailored to their business activities and risk profiles. A BSA compliance program must adequately address the risks posed by its products, services, customer base, and geographical location for the potential of money laundering and terrorist financing.

It is a sound practice for a casino or card club to periodically re-assess its BSA compliance program to assure sufficiency and effectiveness. Casinos may need to update their risk indicators to reflect changes in operational risk profiles (*e.g.*, revised products and services, new products and services). Based on ongoing and current risk assessments, a casino should consider whether its BSA compliance program needs to be revised, updated, or improved.

There are many risk indicators or factors that a casino may need to consider when developing and implementing an effective BSA compliance program to combat money laundering and terrorist financing. Risk factors may differ depending on the business activities of a specific gambling establishment, or its products and services, as well as state, tribal or local gambling regulations that affect the gaming operation. Also, a casino may need to consider the risk management principles that it applies to its overall operations when assessing and managing its BSA risk profile.

Once a casino has identified the specific risk factors unique to its operation, it should conduct a more detailed analysis of its level of vulnerability. The level and sophistication of the analysis may depend on the comprehensiveness of a casino risk assessment process or the risk factors that apply. Also, the results may differ according to its business risk model and governmental gambling regulations. By understanding its risk profile, a casino can apply appropriate risk management processes to its BSA compliance program to identify and mitigate its risk of money laundering and terrorist financing activities occurring within its operation.

On June 30, 2010, FinCEN issued guidance on the topics of BSA Compliance Program requirements and Risk Assessment.

- Guidance (FIN-2010-G003) on Casino or Card Club Compliance Program Assessment (06/30/2010) [HTML](#) | [PDF](#)
- Guidance (FIN-2010-G002) on Casino or Card Club Risk-Based Compliance Indicators (06/30/2010) [HTML](#) | [PDF](#)

For questions about this guidance, please contact FinCEN's Regulatory Helpline at (800) 949-2732.

BSA E-Filing Announces New Toll Free Number and Email Address

The Financial Crimes Enforcement Network (FinCEN) announces a new toll free number and email address for the Bank Secrecy Act Electronic Filing (BSA E-Filing) Service Desk.

The new number is 1-866-346-9478 (Option 1) and the new email address is BSAEFiling-Help@fincen.gov. The Service Desk hours and days of operation will remain the same: Monday through Friday 8 a.m. to 6 p.m. East Coast Time. The BSA E-Filing homepage is located at <http://bsaefiling.fincen.treas.gov>.



Do You Know a Small Organization at Risk of Losing Its Exempt Status?

We need your help to prevent tax-exempt organizations in your community from losing their tax exemption. Tax-exempt organizations, except churches and church-related groups, that fail to file for three consecutive years [automatically lose their tax-exempt status](#). The IRS is providing [one-time relief](#) to allow small tax-exempt organizations to come back into compliance by October 15, 2010, and retain their tax-exempt status even though they failed to file for three consecutive years. The IRS has published a [list](#) of over 300,000 organizations at risk of losing their exemption because the IRS has no record of their filing for 2007, 2008 or 2009.

If you are a volunteer, member or just a friend of an organization at risk of losing its exemption, please alert the organization and encourage it to go to [IRS.gov](#) and find out how the organization can come back into compliance today.

Pre Order the Tax Calendar for Small Businesses and Self-Employed

The 2011 Tax Calendar is available for pre-order. If you order now, the English version of the 2011 Tax Calendar will be shipped by early November. The Tax Calendar for Small Businesses and Self-Employed (Pub 1518, Catalog Number 12350Z) is a 12-month wall calendar. It is filled with useful information on general business taxes, IRS and SSA customer assistance, electronic filing and paying options, retirement plans, business publications and forms, and common tax filing dates. Each page highlights different tax issues and tips that may be relevant to small business owners with room on each month to add notes, state tax dates, or business appointments. [Copies can be ordered online](#) or from the IRS by calling (800) 829-3676.



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Tax News For You! - Individual Tribal Member Information

Tax Center to Assist Unemployed Taxpayers

[The "What ifs" of an Economic Downturn](#)

The Internal Revenue Service recognizes that many people may be having difficult times financially. There can be a tax impact to events such as job loss, debt forgiveness or tapping a retirement fund. If your income decreased, you may be newly eligible for certain tax credits, such as the [Earned Income Tax Credit](#).

Publications to assist unemployed taxpayers

[Publication 4128](#) , Tax Impact of Job Loss

[Publication 4763](#), Job Related Questions During an Economic Downturn

Assistance with filing and paying taxes

If you have trouble paying your tax bill, contact the IRS immediately. There are steps we can take to help ease the burden. You should file a tax return even if you are unable to pay so you can avoid additional penalties.

[Free Tax Help](#)

[Publication 1546](#), The Taxpayer Advocate Service at the IRS – How to Get Help with Unresolved Tax Problems

[Payment Plans, Installment Agreements](#)

[Offers in Compromise](#)

[IRS Help for Financially Distressed Taxpayers](#)

Starting your own business

Some taxpayers may see unemployment as an opportunity to start their own businesses.

[Starting a Business](#)

[Self-Employed Individuals Tax Center](#)

[Small Business Tax Workshops](#) Learn the basics by taking a free Virtual Small Business Tax Workshop.

[Business.gov](#) guides you through the maze of government rules and regulations and provides access to services and resources to help you start, grow, and succeed in business.

Health insurance

[COBRA Health Insurance](#) - Workers who lose their jobs may qualify for a 65% reduction in health insurance premiums for up to 15 months.

[Health Coverage Tax Credit](#) - Trade-affected workers and PBGC payees receive an 80% credit for health insurance premiums.

Other Resources

[Publication 908](#), Bankruptcy Tax Guide

[Canceled Debt](#) – Is it Taxable or Not?

[Publication 4705](#), Overview: Mortgage Debt Forgiveness

[Bartering Income](#) Bartering for goods or services? Know the rules.



Current scams and phishing sites posing as the IRS

There is a fraud risk you need to be aware of. It is related to the Electronic Federal Tax Payment System.

The IRS recently became aware of a fraudulent scheme targeting EFTPS users, the scheme uses an e-mail that claims your tax payment was rejected and directs you to a website for additional information. The website contains malware that will attempt to infect your computer.

If you receive a message claiming to be from the IRS or EFTPS, please:

1. Do not reply to the sender, access links on the site or submit any information to them.
2. Forward the message immediately to us at phishing@irs.gov.
3. [How to report and identify](#) phishing, e-mail scams and bogus IRS websites.
4. If you receive a suspicious e-mail or discover a website posing as the IRS, please forward the e-mail or URL information to the IRS at phishing@irs.gov.
5. [EFTPS](#) is a tax payment system provided free by the U.S. Department of Treasury. Pay federal taxes electronically via the Internet or phone 24/7. Visit [EFTPS](#) to enroll.

Remember The IRS does not initiate taxpayer communications through e-mail.

Tax Tools for Tribes

You can order our comprehensive reference CD-ROM containing [Publication 4268](#) (Employment Tax Guide for Tribes), [Publication 3908](#) (Gaming Tax Law for Indian Tribal Government), [Publication 15](#) (Employer's Tax Guide), [Publication 15-A](#) (Employer's Supplemental Tax Guide), [ITG News](#) issuance for your area for the last 8 quarters, a "primer" for federal tax issues affecting individual Native Americans, and a guide on "[Helpful Hints to Avoid Penalties](#)".

E-Mail us at ITG.TaxTools@irs.gov and provide your mailing address and the number of CD-ROM copies you would like to receive.



Federal Tax Calendar for Fourth Quarter 2010

October 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1 Make a deposit for Sep 25-28.*	2
3	4	5	6 Make a deposit for Sep 29-Oct 1.*	7	8 Make a deposit for Oct 2-5.*	9
10	11	12 Employees are required to report to you tips of \$20 or more earned during September.	13	14 Make a deposit for Oct 6-8.*	15 Make a deposit for Oct 9-12.* Make a deposit for Sep under monthly deposit rule.**	16
17	18	19	20 Make a deposit for Oct 13-15.*	21	22 Make a deposit for Oct 16-19.*	23
24/31	25	26	27 Make a deposit for Oct 20-22.*	28	29 Make a deposit for Oct 23-26.*	30

November 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3 Make a deposit for Oct	4	5 Make a deposit for Oct	6
7	8	9	10 Make a deposit for Nov 3-5.* Employees are required to report to you tips of \$20 or more	11	12	13
14	15 Make a deposit for Nov 6-9* Make a deposit for Oct under monthly deposit	16	17 Make a deposit for Nov 10-12.*	18	19 Make a deposit for Nov 13-16.*	20
21	22	23	24 Make a deposit for	25	26	27
28	29 Make a deposit for Nov	30				

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.
 ** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS must be initiated at least one day prior to the due dates listed above in order to be timely.



December 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 Make a deposit for Nov 24-26.*	2	3 Make a deposit for Nov 27-30.*	4
5	6	7	8 Make a deposit for Dec 1-3.*	9	10 Make a deposit for Dec 4-7.* Employees are re- quired to report to you tips of \$20 or more earned during	11
12	13	14	15 Make a deposit for Dec 8-10.* Make a deposit for Nov under monthly	16	17 Make a deposit for Dec 11-14.*	18
19	20	21	22 Make a deposit for Dec 15-17.*	23	24	25
26	27 Make a deposit for Dec 18-21.*	28	29 Make a deposit for Dec 22-24.*	30	31	

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule. NOTE: Deposits made through EFTPS must be initiated at least one

**= Make a Monthly Deposit if you qualify under that rule. day prior to the due dates listed above in order to be timely.

Did you know?

You can subscribe/download the tax calender to your Outlook or iCal. Just go to the link below and follow the instructions.

<http://www.irs.gov/businesses/small/article/0,,id=176080,00.html>

Return Filing Dates

November 1

- > File Form 730 and pay the tax on applicable wagers accepted during September 2010.
- > File Form 720 for 3rd quarter of 2010.

November 30

- > File Form 730 and pay the tax on applicable wagers accepted during October 2010.