

ITG News

Indian Tribal
Governments



Keeping First Nations Informed

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Message from the Director

We recently completed our fifth annual Customer Satisfaction Survey and are currently analyzing the feedback that we received from tribes. The results from the 2007 survey will be summarized in the January 2008 edition of ITG News. The annual survey has proven to be a valuable tool in assessing our operations and determining opportunities for improvement. Each year we have assembled a team to review the results and recommend new products and services.

We have just created a new product that we developed from the feedback in last year's survey - "Tax Tools for Tribes," a CD-Rom that can be ordered through our web site at www.irs.gov/tribes. This product contains current electronic versions of:

- Publication 4268 (Employment Tax Guide for Tribes)
- Publication 3908 (Gaming and Bank Secrecy Act Law for Tribes)
- 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
- An Excel file for calculating withholding on per capita gaming distributions
- A "primer" for federal tax issues affecting individual Native Americans
- A guide on "Helpful Hints to Avoid Penalties"

Many tribes had expressed frustration in trying to easily obtain copies of these items. The size of the files made them difficult to download from our web site, and some tribes have very limited Internet access as well. Since most tribes indicated they have ready access to CD-Rom drives, we created the "Tax Tools for Tribes" as a composite of the documents most relevant to tribal tax officials.

We are pleased to be able to offer this product to you. Tribes can order as many copies as they wish for use by tribal finance and payroll staff or within casino operations.

As we develop additional products, we will add them to the CD-Rom. In the interim, I welcome your feedback and suggestions on new or existing products you would like added.

Christie Jacobs



*...the survey is a
valuable tool to
assess our
operations...*

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Federal Tax Calendar for Fourth Quarter 2007

October 2007

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|---|-----|--|--------------------------------------|--|-----|
| | 1 | 2 | 3 * Make a deposit for 9/26-9/28 | 4 | 5 * Make a deposit for 9/29-10/2 | 6 |
| 7 | 8 | 9 | 10 Employees report September tip income to employers if \$20 or more | 11 * Make a deposit for 10/3-10/5 | 12 * Make a deposit for 10/6-10/9 | 13 |
| 14 | 15 ** Make a deposit for September if under the monthly deposit rule | 16 | 17 * Make a deposit for 10/10-10/12 | 18 | 19 * Make a deposit for 10/13-10/16 | 20 |
| 21 | 22 | 23 | 24 * Make a deposit for 10/17-10/19 | 25 | 26 * Make a deposit for 10/20-10/23 | 27 |
| 28 | 29 | 30 | 31 * Make a deposit for 10/24-10/26 | | | |

November 2007

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|--|--|--|---|--|-----|
| | | | | 1 | 2 * Make a deposit for 10/27-10/30 | 3 |
| 4 | 5 | 6 | 7 * Make a deposit for 10/31-11/2 | 8 | 9 * Make a deposit for 11/3-11/6 | 10 |
| 11 | 12 | 13 Employees report October tip income to employers if \$20 or more | 14 | 15 * Make a deposit for 11/7-11/9 ** Make a deposit for October if under the monthly deposit rule | 16 * Make a deposit for 11/10-11/13 | 17 |
| 18 | 19 | 20 | 21 * Make a deposit for 11/14-11/16 | 22 | 23 | 24 |
| 25 | 26 * Make a deposit for 11/17-11/20 | 27 | 28 * Make a deposit for 11/21-11/23 | 29 | 30 * Make a deposit for 11/24-11/27 | |

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

**= Make a Monthly Deposit if you qualify under that rule.

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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 2007

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|--|-----|---|---|---|-----|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 * Make a deposit for 11/28-11/30 | 6 | 7 * Make a deposit for 12/1-12/4 | 8 |
| 9 | 10 Employees report November tip income to employers if \$20 or more | 11 | 12 * Make a deposit for 12/5-12/7 | 13 | 14 * Make a deposit for 12/8-12/11 | 15 |
| 16 | 17 ** Make a deposit for November if under the monthly deposit rule | 18 | 19 * Make a deposit for 12/12-12/14 | 20 | 21 * Make a deposit for 12/15-12/18 | 22 |
| 23 | 24 | 25 | 26 | 27 * Make a deposit for 12/19-12/21 | 28 * Make a deposit for 12/22-12/25 | 29 |
| 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 day prior to the due dates listed above in order to be timely.
 **= Make a Monthly Deposit if you qualify under that rule.

Return Filing Dates

October 1st

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

October 31st

- > File Form 941 for the 3rd quarter of 2007. If all deposits paid on time and in full, file by November 13th.
- > File Form 730 and pay the tax on applicable wagers accepted during September.

November 30th

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

Decemebr 31st

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



New Annual Electronic Filing Requirement for Small Tax-Exempt Organizations e-Postcard (Form 990-N)

Beginning in 2008, small tax-exempt organizations that previously were not required to file returns may be required to file an annual electronic notice, Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ*. This filing requirement applies to tax periods beginning after December 31, 2006. Organizations that do not file the notice will lose their tax-exempt status.

Small tax-exempt organizations whose gross receipts are normally \$25,000 or less are not required to file Form 990, *Return of Organization Exempt From Income Tax*, or Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*. With the enactment of the Pension Protection Act of 2006 (PPA) these small tax-exempt organizations will now be required to file electronically Form 990-N, also known as the e-Postcard, with the IRS annually. Exceptions to this requirement include organizations that are included in a group return, private foundations required to file Form 990-PF, and section 509(a)(3) supporting organizations required to file Form 990 or Form 990-EZ. In addition, this filing requirement does not apply to churches, their integrated auxiliaries, and conventions or associations of churches.

The IRS started mailing educational letters in July 2007 notifying small tax-exempt organizations that they may be required to file the e-Postcard. The IRS is developing an electronic filing system (there will be no paper form) for the e-Postcard and will publicize filing procedures when the system is completed and ready for use.

The PPA requires the IRS to revoke the tax-exempt status of any organization that fails to meet its annual filing requirement for three consecutive years. Therefore, organizations that do not file the e-Postcard (Form 990-N) or an information return Form 990 or 990-EZ for three consecutive years will have their tax-exempt status revoked as of the filing due date of the third year.

If you would like additional information about this new filing requirement, including notification when the filing system is ready, or information about other new developments, you can subscribe to Exempt Organization's EO Update, a regular e-mail newsletter that highlights new information through a link posted on the Charities pages of www.irs.gov.

Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Suzanne Perry at (602) 207-8254.



Transition Relief Period Extended on Pension Changes

Section 414(d) of the Code provides that a "governmental plan" includes a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

Certain plans of Indian tribal governments (ITG) are also governmental plans under § 414(d). Specifically, section 906(a)(1) of the Pension Protection Act of 2006 (PPA '06) amended § 414(d) with respect to ITG plans to provide that the term "governmental plan" includes a plan that is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

The provisions of section 906 of PPA '06 apply to plan years beginning on or after August 17, 2006 (PPA's date of enactment). For example, an ITG plan with an October 1 to September 30 plan year is a governmental plan under § 414(d) as amended by PPA '06 only if it satisfies this definition in operation beginning on October 1, 2006. Notice 2006-89 provides that the Service and Treasury anticipate issuing guidance on §414(d) as amended and that, until such guidance is issued, an ITG plan will be treated as satisfying the requirements to be a governmental plan under § 414(d) if it complies with those requirements based on a reasonable and good faith interpretation of the amendment made by section 906(a)(1) of PPA '06. Section III.B. of the notice provides certain approaches that, if taken by September 30, 2007, permit separate plans to be established for commercial ITG employees and for other ITG employees who perform essential governmental functions (governmental ITG employees) under the reasonable and good faith compliance standard. Section III.E. indicated that the relief provided in Section III applied pending the issuance of further guidance relating to § 414(d), including the amendment made by section 906(a)(1) of PPA '06. The notice also invited comments from the public on whether additional transition issues need to be addressed.

Since the issuance of Notice 2006-89, the Service and Treasury have continued to consult with Indian tribal government representatives. Based on those consultations and the comments received in response to Notice 2006-89, and until future guidance is issued, the transition relief provided under Notice 2006-89 has been revised so that the date "September 30, 2007" in Section III.B. of Notice 2006-89 was replaced with "the date that is six months after guidance is issued under § 414(d) of the Code, as amended by section 906 of the Pension Protection Act of 2006, on the determination of whether a retirement plan maintained by an ITG is a governmental plan with the meaning of §414(d)."

This extension is conditioned on the plans involved not being amended, for periods before the extended date, to reduce benefits unless the reduction: (i) does not vary based upon whether the participant is a governmental ITG employee or a commercial ITG employee, or (ii) is made to the plan for commercial ITG employees and is the minimum reduction necessary to satisfy the requirements of the Code. If a reduction occurs that does not meet either of these conditions, the extension provided under this notice ends on the date the reduction goes into effect.

We will continue to post updates on this important issue on the "Recent Developments" page of our web site at www.irs.gov/tribes.



Protecting Tribes and Tribal Members from Schemes

The Internal Revenue Service continues to aggressively pursue individuals who offer “tax planning” services that promote activities that violate federal tax law. Where necessary, we will work in concert with the United States Department of Justice to secure court injunctions that require the promoter to cease activity. An example of one such injunction that involved a scheme being marketed to tribes and tribal members was one issued by the United States District Court in Los Angeles in December 2006 against an entity known as Benecorp and its two principals, Stephen Drake and Kenneth Sorenson.

In order to secure an injunction, the government must establish that the scheme being promoted:

- is contrary to federal tax law,
- enriches the promoter, and
- harms the U.S. Treasury

Unfortunately, these requirements often mean that we must allow the scheme to operate for a time in order to establish that federal tax revenues have not been legally paid as a result of the scheme. Thus, a tribe or tribal member(s) can suffer harm through the loss of funds to the scheme and/or subsequent federal tax liabilities that may be assessed through an examination done by the IRS.

There are several ways that tribes and tribal members can protect themselves:

- Contact the IRS if you are approached by someone offering a “plan” to save on your taxes when the plan appears “too good to be true.” You can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at tege.itg.schemes@irs.gov.
- Beware of any promoter who has been the subject of prior injunctive action for similar tax schemes.
- Talk with legal counsel and ensure that the plan being promoted is in conformance with federal tax law and has acceptable risk to you.

The office of Indian Tribal Governments wants to work with you to ensure that the assets of tribes and tribal members are not subjected to needless risk by promoters of schemes whose principal motivation may be their own personal enrichment. If you are approached by such individuals, please feel free to contact us, or at a minimum, proceed very cautiously. Clever marketing can trap even those who are normally very careful. Don’t get caught up in something that seems too good to be true - it usually is.

Self-Assess Your Federal Tax Compliance Risks

Tribal entities can now self-assess their federal tax compliance and work with ITG to address any problems they uncover. Entities electing to participate receive a fillable template from ITG and are provided with the name of a local ITG Specialist who will serve as their resource during the process.

Information on the program, as well as an on-line request form, are available through the “Enhancing Federal Tax Compliance” link on the right-hand side of the ITG web site landing page at www.irs.gov/tribes, or you can make an inquiry about the program via e-mail to tege.itg.tefac@irs.gov



IRS Warns Taxpayers About Email Schemes

IR-2007-109, May 31, 2007

Washington – The Internal Revenue Service today alerted taxpayers to the latest versions of an email scam intended to fool people into believing they are under investigation by the agency's Criminal Investigation division.

The e-mail purporting to be from IRS Criminal Investigation falsely states that the person is under a criminal probe for submitting a false tax return to the California Franchise Tax Board. The e-mail seeks to entice people to click on a link or open an attachment to learn more information about the complaint against them. The IRS warned people that the e-mail link and attachment is a Trojan Horse that can take over the person's computer hard drive and allow someone to have remote access to the computer. The IRS urged people not to click the link in the e-mail or open the attachment.

Similar e-mail variations suggest a customer has filed a complaint against a company and the IRS can act as an arbitrator. The latest versions appear aimed at business taxpayers as well as individual taxpayers.

The IRS does not send out unsolicited e-mails or ask for detailed personal and financial information. Additionally, the IRS never asks people for the PIN numbers, passwords or similar secret access information for their credit card, bank or other financial accounts. "Everyone should beware of these scam artists," said Kevin M. Brown, Acting IRS Commissioner. "Always exercise caution when you receive unsolicited e-mails or e-mails from senders you don't know."

Recipients of questionable e-mails claiming to come from the IRS should not open any attachments or click on any links contained in the e-mails. Instead, they should forward the e-mails to phishing@irs.gov (follow the [instructions](#)).

The IRS also sees other e-mail scams that involve tricking victims into revealing private personal and financial information over the Internet, a practice that is known as "phishing" for information.

The IRS and the Treasury Inspector General for Tax Administration work with the U.S. Computer Emergency Readiness Team (US-CERT) and various Internet service providers and international CERT teams to have the phishing sites taken offline as soon as they are reported.

Other fraudulent e-mail scams try to entice taxpayers to click their way to a fake IRS Web site and ask for bank account numbers. Another widespread e-mail tells taxpayers the IRS is holding a refund (often \$63.80) for them and seeks financial account information. Still another email claims the IRS's 'anti-fraud commission' is investigating their tax returns.

This and other articles can be found by visiting the IRS website at www.irs.gov.



Poker Tournament Guidance Issued

Beginning March 4, 2008, the IRS will require casinos and other sponsors of poker tournaments to report winnings in excess of \$5,000, both to the winners and to the IRS. Details are in Revenue Procedure 2007-57.

Of course, all tournament winners must report their winnings on their federal income tax returns regardless of the amount and regardless of whether the winner receives a Form W-2G or any other reporting form. This is true for 2007 and earlier years, and will continue to be the law after the Revenue Procedure goes into effect.

Some casinos and players, however, have been confused over whether poker tournament sponsors who hold the money for participants in a poker tournament are required to report the winnings to the IRS and withhold tax on the winnings. For tournaments completed during 2007 and before March 4, 2008, the IRS will not require casinos and other sponsors of poker tournaments to report the winnings to the IRS or withhold tax on the winnings. Beginning March 4, 2008, the IRS will require all tournament sponsors to report tournament winnings of more than \$5,000, usually on an IRS Form W-2G.

Tournament sponsors who comply with this reporting requirement will not need to withhold federal income tax at the end of a tournament. If any tournament sponsor does not report the tournament winnings, the IRS will enforce the reporting requirement by also requiring the sponsor to pay any tax that should have been withheld from the winner. The withholding amount is normally 25 percent of any amounts that should have been reported.

So that tournament sponsors can comply with this requirement, tournament winners must provide their taxpayer identification number, usually a social security number, to the tournament sponsor. If a winner fails to provide their identification number, the tournament sponsor must withhold federal income tax at the rate of 28 percent.

If you have further questions, you may contact your ITG Specialist.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances and eliminate the threats posed by individuals with schemes that appear "too good to be true" and often are.

If you are aware of financial impropriety or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at tege.itg.schemes@irs.gov



Treatment of Payments Made To Tribal Council Members

Revenue Ruling 59-354, 1959-2 C.B. 24, sets forth a limited employment tax exception for amounts paid to tribal council members for services performed by them as council members. Revenue Ruling 59-354 holds that while these amounts are includible in the council member's gross income, and therefore subject to federal income taxes, they do not constitute wages for purposes of FICA, FUTA and Federal income tax withholding.

Tribal chairmen and tribal councilmen are employees; however, salaries or stipends paid to them for services performed by them as council members are treated differently than regular employee salaries. These amounts should be included in the council member's gross income; however, they do not constitute wages for purposes of the Federal Insurance Contributions Act (FICA—this is Social Security and Medicare) or Federal income tax withholding. Per Revenue Ruling 59-354, you are required to provide Form W-2 to these individuals. Tribal officials are liable for federal income tax on these payments, and some may voluntarily have the federal income tax withheld to avoid personal year end deficiencies. They cannot elect to participate in FICA. The Social Security Administration has stated that they will not honor payments made into the system beginning with the 2004 year.

It is possible for tribal council members to receive two Forms W-2, one for tribal council member wages and one for services performed in another capacity. For instance, if an individual serves on the tribal council and also works for the Tribe as a secretary or school teacher or some other position that is separate from the council, they would then receive two Forms W-2.

The Tribe is also responsible for providing a copy of Revenue Ruling 59-354 to each tribal council member so that they can attach it to their individual income tax return. Or, if preferable, the Tribe can provide a statement to be attached to the return that advises them that their W-2 is treated differently (i.e., salaries do not constitute wages for purposes of FICA or federal withholding taxes per Revenue Ruling 59-354).

If the Tribe has been unaware of Revenue Ruling 59-354 and your council members have been paying FICA taxes, there is a way that you can claim a refund of FICA taxes paid for 2004, 2005 and 2006, both for the Tribe's portion and the individual council member's portion. The Tribe files a Form 843, Form 941C, corrected W-2s, corrected W-3; and the Council Members must sign a statement that allows the Tribe to collect the council member's portion of the refund. The entire amount of the refund will go to the Tribe and the Tribe is responsible for refunding the council member's portion to them. The deadline for filing a claim for 2004 is April 15, 2008.

If you would like assistance in filing a claim for refund of FICA taxes, please contact your ITG Specialist. The phone numbers and email addresses for the ITG Specialists who serve the Pacific Northwest are listed on page 12 of this newsletter.

The information in this article can be found in Publication 4298, Employment Tax Desk Guide. This publication can be found on our ITG Website at www.irs.gov/tribes or by ordering the new CD-ROM that is available for order as shown on page 1 of this publication.

For an example and instructions for filling in the Form W-2 please see page 10.



Tax News For You!

Individual Tribal Member Information

Do you have an IRS problem? Get help from the Taxpayer Advocate Service!

Have you been tempted by the ads that tell you they can help resolve your IRS problems? Of course they don't do this for free. Before giving in to the temptation of contacting them you need to know about the Taxpayer Advocate Service.

Most people only think about the IRS in April. But if you have IRS tax problems, you probably are thinking about the IRS a lot more! There is a part of the IRS that really is there to help Taxpayers. It's called the Taxpayer Advocate Service, an independent branch of the IRS that exists solely to assist taxpayers who are facing hardships, or have problems that have not been resolved through normal IRS channels. Because it is an independent branch of IRS it has been given the authority to operate independently of other IRS offices. They have the discretion of not disclosing to the IRS any information you give them, or even informing the IRS that you have contacted them.

The Taxpayer Advocate really is the best kept secret of the IRS. The Service is open to both individual and business taxpayers. The Taxpayer Advocate's representatives aren't intended to be the first point of contact but rather, their job is to assist taxpayers when other avenues have failed. For example this last year they assisted with collection issues, refund claims, examination cases, penalty abatements, injured spouse claims and much more.

Typically the Taxpayer Advocate deals with taxpayers who are experiencing economic hardships or financial burdens stemming from an IRS tax problem. In general if you have not been able to resolve an issue in 30 days or more or have not received a response or resolution in the time promised or are suffering— or are about to suffer— a significant hardship you can request the help of the Taxpayer Advocate Service. It is free and tailored to meet your needs.

One of the best features of using the Taxpayer Advocate Service is that the taxpayer has one person assigned to the case for the duration of their assistance. This is quite different than calling a 1-800 number and talking to the person who answers the phone. It is frustrating to have to continually explain the circumstances of a particular situation over and over again.

There is a Taxpayer Advocate Service office in every state and Puerto Rico. The local state offices are listed in IRS Publication 1546, *Troublesome Tax Issues? Can't see the forest for the trees?*, or at www.irs.gov. Click on the Taxpayer Advocate link at the bottom of the home page or you can call toll-free 1- 877-777-4778.

Need More Help? Low Income Tax Clinics may be for you!

If you are a low income taxpayer and cannot afford professional tax assistance, you may qualify for help from Low Income Taxpayer Clinics (LITCs). LITCs are operated by tax exempt organizations or programs at accredited law, business and accounting schools. They receive partial funding from the IRS. However, clinics and their volunteers are completely independent of and are not associated with the federal government. They represent low income taxpayers involved in controversies with IRS and provide tax education and outreach to individuals for whom English is a second language. Clinics may provide services for free or may charge only a nominal fee. To find the clinic nearest you, see the LITC pages on www.irs.gov/advocate or IRS Publication 4134, *Low Income Taxpayer Clinic List*.

You can order IRS publications by calling 1-800-829-3676 or go to www.irs.gov.



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- **Visit: Indian Tribal Governments** Web site at **www.irs.gov/tribes**
- **Write: Internal Revenue Service**

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