

ITG News
Keeping First Nations Informed

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Message from the Director

The recent Consultation Listening meeting held in February in Arlington, Virginia included a discussion on whether the Internal Revenue Service uses "cookies" to track access to www.irs.gov, the web site we use to provide all customers with ready access to federal tax information. While we reassured the attendees that there is no tracking of access and even posted a link at the bottom of the ITG landing page, the discussion made me realize that we should clearly articulate our overall concern for the privacy of Tribal tax information.

The Internal Revenue Code contains significant limitations on the accessibility of tax information. Quite simply, tax information is protected as some of the most confidential data that the federal government maintains. The IRS is prohibited from sharing information with very narrowly defined exceptions. Those exceptions generally cover court ordered releases, limited information sharing with other taxation agencies, and releases of information to Congress under federal statutes that require such information to be provided in order to enhance tax compliance.

The statutes impose severe penalties on any IRS official who releases information to a third party, whether orally or in writing, beyond those situations where it is a legal requirement, or necessitated to obtain necessary

information for tax administration requirements. Such a situation might include sharing information with IRS Counsel where necessary to obtain legal advice on a Tribal issue.

Independent of the legal requirements that protect your tax information, I want to state my firm commitment to protecting the privacy of any conversations that you may have with me or my staff. For example, those who have attended the Consultation Listening meetings held to date are aware that we do not collect names of attendees unless they wish to provide them. Where Tribes have requested one-on-one meetings to discuss individual matters, we have scheduled them in a private area and have maintained those conversations as confidential.

We will continue to respect the requirements of federal law as well as respect your rights as a sovereign entity. Your information and our discussions will not be shared with anyone except those with a “need to know.”

As always, I am available to discuss any concerns you may have by calling me at (202) 283-9736.

Christie Jacobs

New Rules Outlined for ITIN Acceptance Agents

The Internal Revenue Service has announced new rules for individuals who participate in the Individual Taxpayer Identification Number (ITIN) Acceptance Agent program.

An Acceptance Agent is an individual, business or organization (college, financial institution, accounting firm, etc.) authorized by IRS to assist individuals in obtaining ITINs. Acceptance Agents review applicants' documentation, complete a certificate of accuracy, and forward the certificate and application to the IRS for processing.

The ITIN is for taxpayers who do not qualify for a Social Security Number but who still need the nine-digit identification number used by the IRS to process a Form 1040 and other tax schedules.

Revenue Procedure 2006-10 outlines the new rules and instructions for Acceptance Agents. The four major changes are:

- Acceptance Agent applicants are required to submit to suitability checks.
- Existing Acceptance Agent agreements will expire on December 31, 2006. Acceptance Agents must reapply to retain their approved status.

- Acceptance Agent agreements must be renewed every fourth year.
- Acceptance Agents may request their names be added to a publicly available list that will be published by the IRS.

These changes are part of an on-going IRS effort to ensure that ITINs are used strictly for tax administration purposes. In recent years, the IRS has made a number of revisions to the ITIN program such as requiring the ITIN application be accompanied by a completed tax form and streamlining the number of identification documents that Acceptance Agents can use to confirm the ITIN applicant's identity.

Form 13551, Application to Participate in the IRS Acceptance Agent Program, is available for printing or downloading from the IRS web site at www.irs.gov.

Publication 4268—Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at www.irs.gov/tribes.

Common Compliance Problems Identified through Compliance Checks

Compliance Checks remain a valuable tool to assess the areas where tribes may have federal tax responsibilities and help to mitigate potential problems. Our January 2006 issue introduced the Tribal Evaluation of Filing and Accuracy Compliance (TEFAC) which was designed to allow qualifying tribes to conduct their own self Compliance Check. Information on the entire Compliance Check process, as well as useful references on common tribal tax issues, can be accessed on our web landing page by clicking on "Enhancing Federal Tax Compliance."

The following list shows the "Top 10" items that are surfacing via Compliance Checks and may be useful to you in assessing your own situation. If you believe you may have any of the issues outlined below, you may wish to apply to conduct a self Compliance Check through our TEFAC program. The process is also outlined on our web site at www.irs.gov/tribes.

“The Top 10”

1. FUTA – tribes still making tax deposits and/or filing Forms 940 when they are not required to pay FUTA because they participate in State unemployment.
2. Noncompliance with Revenue Ruling 59-354 - Tribal council members' pay being handled incorrectly and reported on a Form 1099 instead of a Form W-2 or being reported on a Form W-2 with FICA, Medicare and income tax withheld.
3. Form 1099 problems:
 - the forms were not prepared at all,
 - the forms were prepared incorrectly (amounts in the wrong box, etc.),
 - the forms were prepared but not submitted to IRS,
 - the incorrect copy was submitted to IRS,
 - not aware of the exception to filing on payments to corporations,
 - not aware of requirement to file 1099 for medical and legal expenses, even if the recipient is incorporated.
4. Employment tax return filing/deposit problems
 - tax returns filed but no tax deposits were made,
 - deposits were made but no return was filed,
 - deposits were made to incorrect period,
 - deposits were made using the wrong timetable (e.g. monthly deposits when should be semiweekly),
 - unaware of the "next day" deposit rule,
 - Form 941 was filed with no Schedule B attached.
5. Forms W-9 and W-4 are not being used or are not being updated when necessary.
6. Unaware of requirement to backup withhold if no TIN provided prior to payment.
7. Payments to tribal members (committee members, gaming and non-gaming per capita) not reported on information returns, reported on the wrong information return, required withholding not done, or withholding done incorrectly.
8. Amounts on Forms W-2, W-3, and 941 don't reconcile.
9. Incorrect filing requirements for the entity, or there are other tribal entities that were not identified to the IRS as belonging to the tribe.
10. Unaware of magnetic media filing requirement, and unaware of FIRE system (Filing Information Returns Electronically).

Addressing Your Feedback

Many tribes have taken the time to tell us how we can better serve their federal tax administration needs. Participation by Tribes in the annual ITG Customer Satisfaction Survey, Consultation Listening meetings, and direct contacts, has enabled us to identify areas where we can improve the products and services

that we provide for tribes while still maintaining those that are valued as they currently exist.

Below are some changes that are currently being implemented as a result of your feedback. Other changes will soon follow:

- As new federal tax developments surface, we will be using our tribal e-mail distribution list to send information directly to you in a more timely manner.
- A headline area of our web site landing page will now focus on "Recent Developments" and will provide a direct link to recent court cases, new IRS Counsel rulings and opinions, updated ITG web site postings, new ITG products, and newly enacted federal tax legislation that could impact tribes.
- We will be creating a "Helpful Hints to Avoid Penalties" guide to post on the ITG web site along with a blast e-mail distribution showing a link to that new guide.
- With your assistance, we will undertake a structured canvass to identify issues that are unique to your Tribe.
- At a minimum, we will notify tribes annually of the name and telephone number of their assigned ITG Specialist.

ITG is committed to meeting your needs as they are identified. Since the annual IRS Satisfaction Survey is the primary mechanism to assist us in determining areas for improvement, we want to encourage your participation in the survey. It will be mailed to you in late-summer 2006.

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.

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Business Filer Notices

One of the ways we classify our notices is by the type of tax form they're about. We call notices we send about business-related tax forms (such as Forms 941, W-2, and 730) business filer notices.

Notices in Numerical Order. Below is a list of notices with detailed information.

CP 102 - Math Error, Balance Due on Form 941 or 945

Informs the recipient of one or more changes made to their Form 941 or 945 return during processing. The changes resulted in a balance due on the account.

CP 108 - Problem With Your Federal Tax Deposit

Informs the recipient we couldn't determine the tax type or tax period for which a federal tax deposit was intended and explains how we applied the payment.

CP 112 - Math Error, Overpayment on Form 941 or 945

Informs the recipient of one or more changes made to their Form 941 or 945 returns during processing. The changes resulted in an overpayment.

CP 138 - Overpayment Applied to Other Federal Taxes

Informs the recipient that we applied all or part of their overpayment to other taxes they owe.

CP 139 - You May Not Need to File Form 941

Informs the recipient that they won't need to file Form 941 again unless they owe tax for the quarter.

CP 145 - Application of Overpayment Reduced

Informs the recipient that we weren't able to fully honor their request to apply a portion of their overpayment to the subsequent tax period, explains why, and shows the amount, if any, we did apply.

CP 160 - Reminder of Balance Due

Informs the recipient of a balance that is still due on their account.

CP 161 - Balance Due - Request for Payment or Notice of Unpaid Balance

Informs the recipient that there is an unpaid balance due on their account.

CP 165 - Penalty for Dishonored Check (Federal Tax Deposit)

Informs the recipient that a check they sent as payment for their federal tax deposit was returned unpaid by their bank.

CP 207 - Proposed FTD Penalty - Request for Correct Information

Asks the recipient to send us a completed Record of Federal Tax Liability (ROFTL), also known as

Schedule B for Form 941 or Schedule A for Form 945.

CP 209 - EIN Assigned in Error

Informs the recipient that we erroneously assigned them more than one EIN.

CP 235 - Federal Tax Deposit Penalty Waived Due to Change in Deposit Requirements

Informs the recipient that we're waiving their FTD penalty because they meet the criteria for penalty relief.

CP 236 - Reminder of Your Semi-Weekly Deposit Requirements

Reminds the recipient that they're subject to semi-weekly deposits.

CP 238 - You Made One or More Late Federal Tax Deposits But We Didn't Charge You a Penalty

Informs the recipient that they made one or more late federal tax deposits and provides guidance on these deposits and how to make them.

CP 253 - Your Wage Reports Do Not Match the Amounts on Your Employment Tax Returns

Informs the recipient that the amounts they reported to the Social Security Administration on Form W-3 differ from the amounts they reported to us on Forms 941 or 945.

CP 260 - Credit Adjustment

Informs the recipient that we removed one or more credits that had been erroneously applied to their account and that the account now has a balance due.

CP 267 - Account Overpaid - Possibly Misapplied Payments

Informs the recipient that they have more credit available on their account than they claimed on their tax return.

CP 268 - Correction and Overpayment Notice

Informs the recipient of one or more changes made to their return during processing and of a discrepancy in the total credits claimed on their return and the total credits available on their account.

CP 297 - Notice of Intent to Levy and Notice of Your Right to a Hearing

Notifies the recipient of our intent to levy and of their right to receive appeals consideration.

CP 298 - Final Notice Before Levy on Social Security Benefits

Notifies the recipient of our intent to levy on their social security benefits.

Pull Tab Sales and Agent's Form 11-C Notice

Tribes selling pull-tabs are required to file Form 730 Monthly Tax Return for Wagers and Form 11-C Occupational Tax and Registration Return for Wagering

Form 11-C is an annual return which applies to persons receiving taxable wagers whether they receive compensation or are volunteers. Both the tribal government and agents (persons who accept taxable wagers on behalf of the tribe) must file Form 11-C to register and to pay the occupational tax before wagers are accepted and annually thereafter. Generally, the amount of the occupational tax is \$50 per year per person.

The agent has a unique Employer Identification Number (EIN) for purposes of the Form 11-C Occupational Tax. Even though the tribe typically prepares the Form 11-C for the agent and pays the \$50 fee on the agent's behalf, the agent is required to sign the return. A copy of this return should be given to the agent for their records.

Once Form 11-C returns stop being filed under the agent's EIN, he/she may receive Notice CP 515 requesting a Form 11-C for tax period 07-01-200X. If the agent is no longer selling pull tab, he/she should immediately respond to the notice with the statement "The last month I sold pull tabs for XYZ Tribe was MM/YYYY. I do not have a filing requirement for the period listed."

NOTE: July 1, 2006 is the due date for the next Form 11-C for the tribe and any active agents.

Federal Unemployment Tax Refunds (FUTA Tax)

Are you a federally recognized tribe or an enterprise of a federally recognized tribe?

Are you current with filing and paying of your Alaska Quarterly Contribution Reports (ESC tax)?

Are you still filing Form 940?

If your answer to all three of the above questions is yes, you are exempt from FUTA taxes for years ending after December 20, 2000. You are entitled to a refund of all Federal Unemployment Taxes (FUTA) that you paid for tax year 2003, 2004, and 2005. The statute has expired for refunds for 2000, 2001, and 2002.

Contact your local Indian Tribal Government Specialist to obtain instructions for

claiming your refund of FUTA. The name of your local Specialist is provided in this newsletter.

Advance Earned Income Credit

The Earned Income Credit (EIC) is a tax credit for workers who have earned income below specific thresholds. Eligible employees can choose to collect part of the earned income credit during the year from their employers with their paychecks, or they can claim the entire amount on their tax returns at the end of the year.

Eligible employees who want to receive advance EIC payments during the year with their pay must complete Form W-5, Earned Income Credit Advance Payment Certificate. A Tribal entity is required to make advance EIC payments to eligible employees who complete a Form W-5. See IRS Publication 15.

On Form W-5, an employee states that he or she expects to be eligible for the EIC and shows whether he or she has a certificate in effect with any current employer. The employee also shows whether he or she is married, and, if married, whether his or her spouse has a certificate in effect with an employer. An employee may have only one certificate in effect with a current employer at a given time. If an employee is married and his or her spouse also works, each spouse should file a separate Form W-5. Form W-5 remains in effect until the end of the calendar year unless the employee revokes the certificate or files another one. Eligible employees must file a new certificate each year.

An advance EIC payment is not wages and is not subject to withholding of income tax or social security and Medicare taxes. An advance EIC payment does not change the amount of income tax or social security and Medicare taxes withheld from the employee's wages. Add the EIC payment to the employee's net pay for the pay period. When the Form W-2 is completed for the year, show the total advance EIC payments in box 9, "Advance EIC Payment," of Form W-2. Do not include this amount in the "Wages" box.

Advance EIC payments become, in effect, a credit against the employer's Form 941 tax liability. Show the total payments made to employees on the advance EIC line of Form 941. Subtract this amount from the total taxes. (See the instructions for Form 941.)

Required Notice to Employees. Tribal entities are required to notify employees who have no income tax withheld that they may be eligible for a tax refund because of the EIC. Employers are encouraged to notify employees eligible for EIC. Eligible employees may get a refund of the amount of EIC that exceeds any tax they owe. For further information on eligible employees, how to figure

advance EIC payments, and notification requirements, refer to IRS Publication 15.

You will meet the notification requirements by giving the employee either Notice 797, Possible Federal Refund Due to the Earned Income Tax Credit (EIC); your own written statement as long as it has the exact wording of Notice 797; or the official IRS Form W-2, Wage and Tax Statement, which contains a statement on the back of Copy B. You do not need to notify employees who claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

Federal Tax Calendar for Second Quarter 2006

April 2006

- | | |
|---------------------|--|
| Wednesday, April 5 | - * make a deposit for 3/29-3/31 |
| Friday, April 7 | - * make a deposit for 4/1-4/4 |
| Monday, April 10 | - employees report March tip income to employers if \$20 or more |
| Wednesday, April 12 | - * make a deposit for 4/5-4/7 |
| Friday, April 14 | - * make a deposit for 4/8-4/11 |
| Monday, April 17 | - **make a deposit for March if under the monthly Deposit Rule |
| Wednesday, April 19 | - *make a deposit for 4/12-4/14 |
| Friday, April 21 | - *make a deposit for 4/15-4/18 |

May 2006

- | | |
|-------------------|--|
| Wednesday, May 3 | - *make a deposit for 4/26-4/28 |
| Friday, May 5 | - *make a deposit for 4/29-5/2 |
| Wednesday, May 10 | - *make a deposit for 5/3-5/5 |
| | - employees report April tip income to employers if \$20 or more |
| Friday, May 12 | - *make a deposit for 5/6-5/9 |
| Monday, May 15 | - **make a deposit for April if under the monthly deposit rule |
| Wednesday, May 17 | - *make a deposit for 5/10-5/12 |
| Friday, May 19 | - *make a deposit for 5/13-5/16 |
| Wednesday, May 24 | - *make a deposit for 5/17-5/19 |
| Friday, May 26 | - *make a deposit for 5/20-5/23 |

June 2006

- | | |
|--------------------|--|
| Thursday, June 1 | - *make a deposit for 5/24-5/26 |
| Friday, June 2 | - *make a deposit for 5/27-5/30 |
| Wednesday, June 7 | - *make a deposit for 5/31-6/2 |
| Friday, June 9 | - *make a deposit for 6/3-6/6 |
| Monday, June 12 | - employees report May tip income to employers if \$20 or more |
| Wednesday, June 14 | - *make a deposit for 6/7-6/9 |
| Thursday, June 15 | - **make a deposit for May if under the monthly deposit rule |
| Friday, June 16 | - *make a deposit for 6/10-6/13 |
| Wednesday, June 21 | - *make a deposit for 6/14-6/16 |
| Friday, June 23 | - *make a deposit for 6/17-6/20 |
| Wednesday, June 28 | - *make a deposit for 6/21-6/23 |
| Friday, June 30 | - *make a deposit for 6/24-6/27 |

* 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.

Return Filing Dates

May 1st

- File Form 730 and pay the tax on applicable wagers accepted during March.
- File Form 941 for the 1st quarter of 2006. If all deposits paid on time and in full, file by May 10th.

May 31st

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

June 30th

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

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