

# ITG News



Keeping First Nations Informed

October 2009

Publication 4267

Catalog Number 37826U

Eastern Edition

## New Compliance Unit to Debut

Fiscal Year 2009 has closed with a number of significant changes in ITG operations. As many may be aware, the federal budget provided for increased staffing for the IRS as a whole, and ITG was pleased to be able to hire 17 new employees over the past four months. This staffing not only allowed us to replace many employees who had retired or otherwise departed, but actually allowed us to increase our resources in some geographic areas where we had need.

The budget also permitted us to create the "Government Entities Compliance Unit" (GECU), a new function that will be based at our Ogden campus. This unit has already begun work to address compliance issues involving tax exempt bonds, but in the near future they will be undertaking some initiatives directly involving tribal governments. An experienced ITG Specialist is serving as a coordinator for these efforts, and will be assisting with staff training. The ITG Director will also be closely involved.

At present, the GECU is studying a number of initiatives, including following up with tribes where tax deposits have been made but no return has been filed, working with tribes to complete and submit delinquent returns, and conducting assessments of potential areas for outreach and education.

The new unit will not affect the ability of tribes to work directly with their assigned ITG Specialist. That designee will remain the principal point of contact for tribes on any federal tax administration matter, and can also be consulted on any inquiry received from the GECU.

## Consultation Listening Meetings

Our appreciation to everyone who attended the FY 2009 meetings held in Anchorage, Washington D.C. Tulsa, and Albuquerque. Your input is a valuable part of our planning and operations. Our tentative meetings for FY 2010 are listed below. Watch the ITG web site and future editions of ITG News for the specific dates and locations.

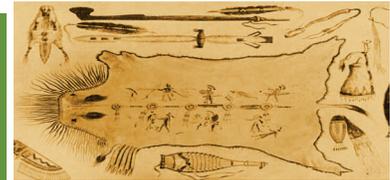
### Tentative Consultation Listening Meetings for FY 2010

California

Minnesota

Nevada

Western Oklahoma



*....the GECU will help address compliance issues, but will not affect the ability of tribes to work with the assigned ITG Specialist...*

## IN THIS ISSUE

New Compliance Unit to Debut	1
Update on Customer Satisfaction Survey	2
Top Five Bank Secrecy Act Issues	2
Identity Theft Attempts Continue	3
Update on Tribal Economic Development Bonds	4
FinCEN to Implement SAR Acknowledgements	5
Powwow Prizes	6
Pull Tab Sales and Form 11-c	7
Message from the Director	8
Problems Identified through Compliance Checks	9
Tax Calendar for the 4th Quarter 2009	10/11



## Update on Customer Satisfaction Survey

We recently began tabulating the results from the FY 2009 Customer Satisfaction Survey. We received 211 responses, a record number. We appreciate everyone's time taken to complete and return the survey form.

As in past years, we will publish a report on the findings from the survey, and will post it to the ITG landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes). We will also convene a team to review the results and determine any actions that ITG can undertake to address concerns raised, or to strengthen the areas that tribes value. Past actions have included increased outreach, web site enhancements, improved communication processes, and assistance in mitigating penalties.

The eventual actions to be undertaken during FY 2010 will be highlighted in future editions of ITG News

## Top Five Bank Secrecy Act Casino Issues

Many tribes have entities subject to the Bank Secrecy Act (BSA), in particular those who operate gaming establishments. ITG provides limited outreach and education on BSA issues, and the Small Business/Self-Employed Division conducts examinations on this area.

The following list reflects common audit issues identified on current BSA casino examinations. It should be noted that this is universal to all gaming operations, not just those that are operated by tribes:

- Failure to create due diligent procedures for mismatched SSNs as identified by the Enterprise Computing Center—Detroit on filed currency transaction reports
- Failure to create due diligent procedures when presented with post office box numbers as permanent addresses for BSA required records or reports
- Failure to adequately use all available information when required for BSA compliance
- Failure to adequately use automated data processing to aid in assuring BSA compliance
- Inaccurate and incomplete currency transaction reports and suspicious activity reports.

Your assigned ITG Specialist is available to assist with these areas if you have any questions, or believe you need further training. ITG can also conduct a BSA Compliance Check to assist a tribe in identifying specific program weaknesses that may exist.



## Identity Theft Attempts Continue

Tribes and tribal members continue to receive e-mails regarding alleged refunds that are due, or that tribes and tribal members are exempt from federal income tax. The messages often purport to come from the Internal Revenue Service. These e-mail messages are not only false, but most importantly represent attempts at identity theft. They are commonly known as “phishing”.

There are several ways you can determine these messages are false:

- The IRS does not send any confidential tax information by e-mail on the Internet. Since it is not a secure communication system, we simply cannot use it to transmit personal information. Thus these messages would never originate from the IRS, even if the sender uses the IRS name or an “irs.gov” e-mail extension.
- The messages often contain serious spelling errors, including one that recently misspelled the word “Service” in our agency name.
- The recipient is asked to complete a form that has a legitimate IRS form name, but is not that form. Recipients can always access IRS forms through the [www.irs.gov](http://www.irs.gov) web site, and then can compare the actual form to the version provided in the e-mail. You will readily see the difference, or may even discover that there is no actual IRS form number that matches the one you have been provided.
- The recipient is asked to provide personal information that the IRS would never seek. This often includes bank account numbers and PINs, ostensibly so the sender can deposit money owed to the recipient of the e-mail. A PIN is not required for making a deposit to a bank account, and the IRS would never ask for that information since only the bank routing and account number are required for a direct deposit.
- Many of these attempts at identity theft ask the recipient to fax a completed form to a long distance telephone number. These are generally fax forwarding services, where your faxed information is immediately relayed elsewhere, often offshore beyond the reach of regulators and law enforcement.

Do not respond to these solicitations. Instead, please report them to your assigned ITG Specialist who in turn will report it to the IRS office that investigates “phishing”. We will also ensure that other tribes that might be subject to these efforts are aware of the latest versions of identity theft.

### 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 (405) 297-4407, or via e-mail at [tege.itg.schemes@irs.gov](mailto:tege.itg.schemes@irs.gov)



## Update on Tribal Economic Development Bonds

The Internal Revenue Service has allocated authority to issue Tribal Economic Development Bonds under the American Recovery and Reinvestment Act of 2009.

In [Notice 2009-51](#), the IRS solicited applications for the allocation of \$2 billion of national bond volume limitation authority (volume cap) to issue Tribal Economic Development Bonds under section 7871(f) of the Internal Revenue Code. Section seven of the notice provides that the volume cap is to be allocated in at least two tranches, the first of which would not exceed \$1 billion in total with a \$30 million limitation per Indian tribal government.

The IRS received 58 applications requesting a total of \$1,329,487,364.88 in volume cap available under the first tranche. Pursuant to the notice, the IRS allocated pro rata amounts of volume cap to the projects described in the applications such that the total amount allocated under the first tranche did not exceed \$1 billion.

For those applicants who elected to consent to public disclosure, the IRS released an [allocation schedule](#) showing the names of the Indian tribal governments, the types and locations of the projects described in the applications and the amounts of the awarded allocations.

The Second Allocation will address the remaining \$1 billion for qualified projects for which applications meeting the requirements have been filed with the IRS on or before January 1, 2010. If the total amount of volume cap requested in all applications received on or before that date does not exceed the \$1 billion, then each applicant will be allocated the amount of volume cap requested and any volume cap remaining may be available for allocation by the IRS as part of an allocation process to be announced by the IRS at some future date. If the total amount of volume cap requested in all applications received on or before January 1, 2010 exceeds \$1 billion, then each applicant will be allocated the amount of volume cap requested reduced pro rata such that the total amount allocated does not exceed the \$1 billion.

Applicants must include a description of the project, or any related project, for which a prior allocation was made, as well as the name of the applicant that received the allocation. For this purpose, related projects include facilities that are owned by the same Indian tribal government, a political subdivision of the Indian tribal government, or an entity controlled by the Indian tribal government, which are (i) located at or near the same site, and (ii) are integrated, interconnected, or directly or indirectly dependent on each other based on all the facts and circumstances.

## 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) 636-9181.



## **Financial Crimes Enforcement Network to Implement SAR Acknowledgements and Validations for BSA E-Filing Submissions**

On September 12, 2009, the Financial Crimes Enforcement Network (FinCEN) implemented Suspicious Activity Report (SAR) Acknowledgements for Bank Secrecy Act Electronic Filing (BSA E-Filing) submissions. This functionality gives BSA E-Fileers a Document Control Number (DCN) as an acknowledgement of receipt for a submitted SAR. Acknowledgements will be available for all SAR form types: Suspicious Activity Report by Depository Institutions (SAR-DI), Suspicious Activity Report by the Securities and Futures Industries (SAR-SF), Suspicious Activity Report by Casinos and Card Clubs (SAR-C), and Suspicious Activity Report by Money Services Businesses (SAR-MSB).

The BSA E-Filing system offers filers a self-enrollment feature to allow them to register to receive SAR Acknowledgement files when they are ready to begin processing. There is no enrollment deadline at this time; however, FinCEN strongly encourages filers to enroll to receive this critical feedback.

FinCEN has developed a [SAR Acknowledgements and Validations Questions and Answers Guide](#) document, which provides filers with the information needed to make required changes for SAR Acknowledgement file processing. It is available on the BSA E-Filing Web site. FinCEN has also revised the [BSA E-Filing Electronic Filing Requirements](#), which include new SAR Acknowledgement file record formats and SAR Validation error codes and descriptions.

Please note, the SAR Acknowledgement functionality is only available for SAR filings submitted electronically via the BSA E-Filing system. SAR filings submitted via paper are not acknowledged.

In December 2009, FinCEN will implement SAR Validations, which will allow the BSA E-Filing system to validate SAR documents and provide filers with feedback on the quality of their submissions.

Please direct questions about the SAR Acknowledgements functionality to the BSA E-Filing System Help Desk at 1-888-827-2778 (option 6) or via email at [BSAEFilingHelp@notes.tcs.treas.gov](mailto:BSAEFilingHelp@notes.tcs.treas.gov). The Help Desk is available Monday through Friday 8 a.m. - 6 p.m. ET. The BSA E-Filing homepage is located at <http://bsaefiling.fincen.treas.gov/>.

## **Self-Assess Your Federal Tax Compliance Risks**

Tribal entities can self-assess their federal tax compliance and work with ITG to address any problems they uncover. Information on the program is available through the "[Self Assess Tribal Tax Compliance](#)" link on the right-hand of the ITG web site landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes), or you can make an inquiry about the program via e-mail to [tege.itg.tefac@irs.gov](mailto:tege.itg.tefac@irs.gov)



## Powwow Prizes

We haven't discussed Powwow prizes for a while...let's review.

In 2004, IRS Counsel Private Letter Ruling (PLR) 200420028 in response to questions regarding the taxability of powwow prizes. While the PLR was issued in response to a specific tribe's question, this information is an indication of the position the IRS would take in similar cases.

The PLR indicated that Form 1099 is required to be issued for powwow prizes of \$600 or more.

But there's more to consider:

- The recipient's name and taxpayer identification number (usually the social security number) should be obtained prior to making the payment. Failure by the payee to provide this information would subject the payment to back up withholding at 28%. Form W-9 is generally used to obtain the proper information and certifications. Payers that do not back up withhold when required may find themselves facing penalty assessments and liability for the amount that should have been withheld.
- Payments that are reportable on Form 1099 are subject to aggregation. A Form 1099 is required when the payments for the calendar year are \$600 or more. That means you must search your records for all payments made to a particular individual during the year to determine if a Form 1099 is required. For example, a prize payment of \$200 during a powwow may have to be added to a \$500 payment in October to a painting contractor for total Form 1099 income of \$700.
- Prizes and awards paid to a non-resident/non-citizen of the United States are subject to 30% withholding. Forms 1042-S and 1042 are required to report these payments. There is no \$600 threshold before reporting begins. In most cases, **all** prizes are reportable and subject to withholding. A Form 1042-S can be issued without a U.S. tax identification number. The individual will file a Form 1040NR to claim a refund of part or all of their withholding, if applicable.

Contact your local ITG Specialist if you have any questions regarding your responsibilities for reporting powwow prizes.

### Eastern States Indian Tribal Government Specialists

Michael Farney, ITG Specialist  
New Haven, CT  
Phone: (203) 781-3084

Jim McCabe, ITG Specialist  
Harrisburg, PA  
Phone: (717) 777-9602

Rose Jones, ITG Specialist  
Baton Rouge, LA  
Phone: (225) 923-4162

Aletha Bolt, ITG Specialist  
Oklahoma City, OK  
Phone: (405) 297-4575



## **Pull Tab Sales and Form 11-C**

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.

**July 1 is the due date for Form 11-C  
for the tribe and any active agents.**

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 tabs, 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."

**Where a third-party "operator" conducts the wagering pool activity on behalf of a tribe ("permittee") who is the party responsible for filing the Forms 730 and 11-C?**

The tax liability and the filing of Form 730, Monthly Tax Return for Wagers, is a joint and several liability between the permittee and the operator. The Occupational Tax would be imposed on any individual accepting wagers, as well as the permittee and operator.

## **Want to Avoid Penalties?**

Are you incurring penalties? Do you want to eliminate penalties in the future?  
ITG has a "Helpful Hints to Avoid Penalties" job aid that can assist you.  
It's available by ordering our "Tax Tools for Tribes" CD-Rom via e-mail  
at [ITG.TaxTools@irs.gov](mailto:ITG.TaxTools@irs.gov).

## **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](mailto:ITG.TaxTools@irs.gov) and provide your mailing address and the number of CD-ROM copies you would like to receive.



## Message from the Director

As the federal government embarks on FY 2010, the office of Indian Tribal Governments enters its second decade of existence. Many people questioned the commitment of the IRS to retain this office when it was initially established, but we have successfully maintained the staffing and support necessary to address the unique federal tax administration issues for our First Nations, along with the expertise needed to meet their unique legal and cultural issues.

It has been a fast-paced decade. Not only has the world and our country changed dramatically; ITG has changed greatly as well. While we have maintained a fairly stable workforce, we have experienced significant turnover. Yes, tribes are not the only governments that see employees come and go.

Our current workforce is 74, but only 18 of our current staff have been with us since 2000. While the changes have been gradual, retirements and other job opportunities have led to major staffing changes over time.

Hopefully many of these changes have been transparent to you. Successful organizations are based on processes, not people. I believe we have created work processes that have allowed us to continue seamless operations despite the changes in personnel. Hopefully tribes agree with that, and have not experienced any problems when assigned ITG Specialists have departed.

We begin FY 2010 with 17 new employees, the largest number of new hires in ITG since 2001. They bring new energy and new ideas, which I plan to embrace. This means that many tribes will be meeting new ITG Specialists, and if your tribe has a newly assigned ITG Specialist, you should have received a letter of introduction. However, I also encourage you to visit the listing of ITG Specialists which can be located under the "Contacting ITG" link in the left border of our landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes).

Of course, I am always available to listen to any ideas, suggestions, and concerns, at [christie.jacobs@irs.gov](mailto:christie.jacobs@irs.gov), or at (202) 283-9800.

*Christie Jacobs*



## Problems Identified through Compliance Checks

You may receive a letter from one of our Specialists requesting an appointment for a Compliance Check. While you may decline, we hope you will set an appointment for the Compliance Check as it is a valuable tool to (1) look at areas where tribes may have federal tax responsibilities and (2) help stop potential problems. It is also a way to help tribal officials and employees learn and/or understand the tribe's filing requirements and avoid errors.

A Compliance Check is a review to see if a tribal entity is following record keeping and information reporting requirements. It does not directly relate to finding a tax liability for any past tax period and does not involve the examination of books and records by the IRS.

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 "Self Assess Tribal 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—[www.irs.gov/tribes](http://www.irs.gov/tribes).

### "The Top 10"

1. Amounts on Forms W-2, W-3, and 941 don't reconcile.
2. Forms W-9 and W-4 are not being used or are not being updated when necessary.
3. Unaware of requirement to backup withhold if no TIN provided prior to payment.
4. 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.
5. 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),
  - Form 941 was filed with no Schedule B attached (when necessary).
6. Payments to tribal members and committee members not reported on information returns, reported on the wrong information return, required withholding not done, or withholding done incorrectly.
7. 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.
8. Incorrect filing requirements for the entity, or there are other tribal entities that were not identified to the IRS as belonging to the tribe.
9. Unaware of magnetic media filing requirement, and unaware of Filing Information Returns Electronically system (FIRE).
10. FUTA – tribes still making Form 940 tax deposits and/or filing Forms 940 when they are not required to pay FUTA because they participate in State unemployment.



# Federal Tax Calendar for Fourth Quarter 2009

## October 2009

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

## November 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2 <i>File Form 730 for wagers received during September</i>	3	4 * Make a deposit for 10/28-10/30	5	6 * Make a deposit for 10/31-11/3	7
8	9 <i>File Form 941 the 3rd calendar quarter of 2009</i>	10 Employees report October tip income to employers if \$20 or more	11	12 * Make a deposit for 11/4-11/6	13	14
15	16 * Make a deposit for 11/7-11/10 ** make a deposit for October if under the monthly deposit rule	17	18 * Make a deposit for 11/11-11/13	19	20 * Make a deposit for 11/14-11/17	21
22	23	24	25 * Make a deposit for 11/18-11/20	26	27	28
29	30 * Make a deposit for 11/21-11/24 <i>Form 730 for wagers received during October</i>					

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

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

10 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 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 * Make a deposit for 11/25-11/27	3	4 * Make a deposit for 11/28-12/1	5
6	7	8	9 * Make a deposit for 12/2-12/4	10 Employees report November tip income to employers if \$20 or more	11 * Make a deposit for 12/5-12/8	12
13	14	15 ** make a deposit for November if under the monthly deposit rule	16 * Make a deposit for 12/9-12/11	17	18 * Make a deposit for 12/12-12/15	19
20	21	22	23 * Make a deposit for 12/16-12/18	24	25	26
27	28 * Make a deposit for 12/19-12/22	29	30 * Make a deposit for 12/23-12/25	31	<div style="border: 1px solid black; padding: 5px; display: inline-block; transform: rotate(-2deg); color: red; font-weight: bold;">             File Form 730 for wagers received during November           </div>	

\* = 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

**November 2nd**

- > File Form 941 for the 3rd quarter of 2009. If all deposits were paid on time and in full, file by November 10th.
- > 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.

**December 31st**

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