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Keeping First Nations Informed

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In This Issue

Message From the Director  
Helpful Hints to Avoid Penalties  
A Primer on Published Guidance  
Form W-9, What is it good for?  
Test Your Knowledge  
Calendar of Tax Events

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Message from the Director

As I travel throughout Indian Country and meet with many tribal representatives, I am asked about the current focus on Bank Secrecy Act (BSA) compliance. Many of these concerns are arising from the recent significant fine assessed by the Financial Crimes Enforcement Network (FinCEN) against a tribal casino in Oklahoma along with publicity that was generated by several FBI cases that were connected to that action. In addition, the number of BSA civil examinations has increased as the federal government directs more resources to this area.

While much of the impetus behind the creation of the Bank Secrecy Act was initially focused on combating the ability of organized crime to launder proceeds of illegal activities, the events of September 11, 2001 brought a renewed emphasis on this area by highlighting the need to track the movement of money that might be used to finance terrorism. The post 9/11 world brought an entire series of new laws and regulations designed to tighten the reporting requirements and ensure that all levels of government have access to vital information to combat crime and terrorism. The Patriot Act is the best example of these changes, but the extension of Suspicious Activity Reporting to tribal casinos in March 2003 is another example.

Hopefully, all governments share a common objective of minimizing the opportunity for individuals to launder funds and/or move money that might be used to harm ourselves, our children, and our neighbors. The recent tribal money laundering case in Oklahoma, as well as other reports filed by tribal entities, has shown that organized crime and terrorists have discovered tribal entities and are making attempts to use them for money laundering.

We are grateful that many tribes have instituted strong Bank Secrecy Act Compliance Programs and are using various tools to alert law enforcement to suspected or potential illegal activities. The filing of FinCEN Forms 102 and 103 by tribal casinos are one example, but we have also had numerous telephone calls from tribal officials to the Money Laundering Hotline. Many Tribes have shown that they want to be full partners in this area. Despite the burden and cost associated with the BSA Compliance Program, there is a keen recognition that we all need to work together to minimize the possibility of money laundering.

However, we are also aware that there are Tribes that lack fully effective BSA programs; ITG stands ready to assist them in making enhancements. ITG Specialists are available to provide training for your staff, copies of pertinent federal regulations, or to assist in reviewing your BSA Compliance Program for your entity. I encourage you to take advantage of our resources and partner with ITG to ensure that Indian Country is a leader in Bank Secrecy Act compliance.

Christie Jacobs

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#### Helpful Hints to Avoid Penalties

One of the areas that surfaced as a concern in Tribal responses to the 2005 Customer Satisfaction Survey is the need for additional assistance in mitigating penalties. While your assigned ITG Specialist is always available to assist you, the best way to avoid penalties is to have an in-depth understanding of what can be done to reduce or eliminate them before they are ever assessed.

In an effort to assist, ITG has created a "Helpful Hints to Avoid Penalties" guide, which is now available on the ITG web site under the Employment Tax page. Hopefully, the suggestions outlined in that guide will reduce penalty assessments, but if a penalty is asserted, the guide also outlines the steps required to address it.

Penalty notices arise from various situations such as failure to deposit payroll taxes timely and late filing or non-filing of various returns. The two most important things to do are:

Determine, through a review of your records, if the notice is correct, AND  
Respond to the notice on or before the date required.

Failure to respond timely can lead to the assessment of further penalties and interest. Failure to review records to ensure the correctness of the notice can lead to payment of unnecessary penalties. If the notice is determined to be

correct and additional tax, penalties, and interest are due; payment should be made within the time frame shown in the notice.

Your Indian Tribal Government Specialist and other IRS personnel are ready to assist you in understanding the notices and determining their accuracy. Our Customer Account Services staff can be contacted toll-free at 1-877-829-5500. This call center is open from 8:00 am to 4:30 pm eastern time.

Your ITG Specialist is also available to assist when a timely response to an incorrect notice does not achieve a satisfactory resolution to the situation. The ITG Specialist can review your response and help you file the proper forms to resolve the issue or ensure the case is routed to the proper office for resolution.

We hope that the guide, coupled with Publication 4268, our on-line Employment Tax Guide for Indian Tribal Governments, will help Tribes to meet federal tax administration requirements with a minimum risk of penalties.

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#### 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 Julie Reese at (303) 231-5250, ext. 236.

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#### 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](http://www.irs.gov/tribes).

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#### A Primer on Published Guidance

For anyone not familiar with the inner workings of tax administration, the array of IRS guidance may seem, well, a little puzzling at first glance. To take a little of the mystery away, here's a brief look at seven of the most common forms of guidance. In its role in administering the tax laws enacted by the Congress, the IRS must take the specifics of these laws and translate them into detailed regulations, rules and procedures. The Office of Chief Counsel fills this crucial role by producing several different kinds of documents and publications that provide guidance to taxpayers, firms and charitable groups. As we begin to upload substantial content to the "Published Guidance" section of the ITG web

site, we thought it might be useful to explain the various types of issuances that can be located there.

**Regulation.** A regulation is issued by the Internal Revenue Service and Treasury Department to provide guidance for new legislation or to address issues that arise with respect to existing Internal Revenue Code sections. Regulations interpret and give directions on complying with the law. Regulations are published in the Federal Register. Generally, regulations are first published in proposed form in a Notice of Proposed Rulemaking (NPRM). After public input is fully considered through written comments and even a public hearing, a final regulation or a temporary regulation is published as a Treasury Decision (TD), again, in the Federal Register.

**Revenue Ruling.** A revenue ruling is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties and regulations. It is the conclusion of the IRS on how the law is applied to a specific set of facts. Revenue rulings are published in the Internal Revenue Bulletin for the information of and guidance to taxpayers, IRS personnel and tax professionals. For example, a revenue ruling may hold that taxpayers can deduct certain automobile expenses.

**Revenue Procedure.** A revenue procedure is an official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties and regulations and that should be a matter of public knowledge. It is also published in the Internal Revenue Bulletin. While a revenue ruling generally states an IRS position, a revenue procedure provides return filing or other instructions concerning an IRS position. For example, a revenue procedure might specify how those entitled to deduct certain automobile expenses should compute them by applying a certain mileage rate in lieu of calculating actual operating expenses.

**Private Letter Ruling.** A private letter ruling, or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. A PLR may not be relied on as precedent by other taxpayers or IRS personnel. PLRs are generally made public after all information has been removed that could identify the taxpayer to whom it was issued.

**Technical Advice Memorandum.** A technical advice memorandum, or TAM, is guidance furnished by the Office of Chief Counsel upon the request of an IRS director or an area director, appeals, in response to technical or procedural

questions that develop during a proceeding. A request for a TAM generally stems from an examination of a taxpayer's return, a consideration of a taxpayer's claim for a refund or credit, or any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director, appeals. Technical Advice Memoranda are issued only on closed transactions and provide the interpretation of proper application of tax laws, tax treaties, regulations, revenue rulings or other precedents. The advice rendered represents a final determination of the position of the IRS, but only with respect to the specific issue in the specific case in which the advice is issued. Technical Advice Memoranda are generally made public after all information has been removed that could identify the taxpayer whose circumstances triggered a specific memorandum.

**Notice.** A notice is a public pronouncement that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. For example, notices can be used to relate what regulations will say in situations where the regulations may not be published in the immediate future.

**Announcement.** An announcement is a public pronouncement that has only immediate or short-term value. For example, announcements can be used to summarize the law or regulations without making any substantive interpretation; to state what regulations will say when they are certain to be published in the immediate future; or to notify taxpayers of the existence of an approaching deadline.

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## Form W-9, What Is It Good For?

Form W-9 is used to request the taxpayer identification number (TIN) of a U.S. person.

The TIN for an individual is generally a social security number (SSN). By using a Form W-9 you are able to secure from the payee the necessary information you need to complete a Form 1099-MISC or W-2G. The payee signs Form W-9, under penalties of perjury, verifying that the number shown on the form is their correct TIN, that they are not subject to backup withholding, and that they are a U.S. person. If you are later notified by the IRS of a Name/TIN mismatch, having a W-9 on file will help you avoid potential penalties.

A good practice is to secure the Form W-9 from a vendor before any work or services are provided.

Many businesses seeking bids on a job will include this form as part of their bid packet. At the end of the year, you don't want to find yourself in the position of

trying to secure the TIN from a vendor that you now cannot contact or locate.

If the payee fails to furnish his TIN, you must backup withhold at the current rate of 28%.

Once the TIN is provided, you can discontinue the backup withholding. Submitting an information return with no TIN and no backup withholding will result in penalties. Currently the penalty is \$50 for each form. As the payer, you will also be liable for the backup withholding that should have been withheld, but wasn't.

The preparer of a Form W-9 needs to check the appropriate box indicating whether they are an Individual/Sole proprietor, Corporation, Partnership, or Other. If they claim to be a Limited Liability Company (LLC), you need to be sure they indicate whether they are a corporation, partnership, or single-owner LLC. An individual or sole proprietor can provide either a social security number (SSN) or employer identification number (EIN). If an EIN is provided, be sure the business name line is completed.

In a casino, a Form W-9 can come in handy to secure the SSN of a patron at the time of a reportable event. For example, a slot machine win of \$1,200 or more requires the issuance of Form W-2G. In order to receive payment, the patron must provide proof of his or her name and social security number. With the problem of identify theft, most people don't carry their social security card with them. In this example, a completed and signed Form W-9 is just as good as a social security card.

With any Form W-9 make sure that it is fully completed and signed.

If it is handwritten, make sure that you can read it. When the time comes to complete those information returns, you don't want to be guessing whether that "1" is a "7" or how that last name is spelled. Form W-9 can be downloaded from our website at [www.irs.gov/tribes](http://www.irs.gov/tribes) under Forms and Publications.

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### 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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## Test Your Knowledge

Situation: Continuing staff expansion presented new challenges for XYZ Tribe. In prior years, the Tribe was on a monthly deposit schedule for federal employment taxes (i.e. taxes accumulated during a calendar month were deposited by the 15th day of the following month.) This year, having exceeded the \$50,000 threshold during the look back period, the Tribe is a semiweekly schedule depositor. The Tribe's payroll manager, fortunately, had a good understanding of the semiweekly rules and the transition to the new deposit procedures had gone smoothly.

Now the time had come to prepare the Form 941, Employer's Quarterly Federal Tax Return. As a semiweekly depositor, XYZ Tribe had the additional requirement of including Schedule B, Report of Tax Liability for Semiweekly Schedule Depositors.

The task of preparing Schedule B was assigned to Patrick, one of XYZ Tribe's payroll associates. Employees were paid every two weeks, so there were a number of transactions to consider. Patrick diligently transcribed the tax deposits onto Schedule B; subtotaled them by month; entered the quarterly total; and then turned the form over to the payroll manager for review. The feedback on these efforts caused Patrick some surprise. According to the manager, although the listing of deposits was accurate and matched the banking records, it would likely result in correspondence from the IRS processing center and even perhaps in having a penalty asserted.

Question: What was the problem that the payroll manager noticed with the Schedule B?

Answer: Patrick unfortunately made the error of listing the deposits made during the quarter instead of providing a record of the employment tax liability arising from wage payments. The tax liability to enter for each payday includes: (1) the income tax withheld from employee paychecks; plus (2) both the employer and employee share of social security and Medicare taxes; less (3) any advance earned income credit (EIC) payments made. Schedule B is used to determine if timely deposits of employment taxes were made by semiweekly schedule employers. If Schedule B is incomplete or missing, the IRS cannot tell if the deposits were timely because the actual dates of the tax liabilities are unknown. An "averaged" failure to deposit penalty may be assessed. This penalty is computed by comparing the deposits and payments to an equal allocation of the total tax liability over the period. (An "averaged" deposit penalty will also occur if

the total tax liability reported on Schedule B does not equal Form 941, line 10, "Total Taxes After Adjustment for Adv EIC".)

Situation: Kerry, Controller for ABC Tribe, was reviewing the Forms 1099-MISC prepared by a staff assistant. Even though the non-employee compensation payments exceeded the reporting threshold (i.e. \$600 or more), Kerry was unsure about issuing a Form 1099 to contractor, Maple Services LLC. Maple provided contract equipment maintenance and had received payments totaling \$5,700 for the year. John, the owner of Maple, provided the services under the contract. Kerry noted that although Maple Services was a limited liability company (LLC), the Individual/Sole Proprietor status box was checked on the Form W-9 (Request for Taxpayer Identification Number and Certification). Kerry thought that the Form W-9 otherwise looked complete but was uncertain why Maple Services LLC would have the status of sole proprietor.

Question: Is a Form 1099-MISC required for Maple?

Answer: Yes, ABC Tribe should issue a Form 1099-MISC to Maple Services LLC since, as discussed below, Maple is treated as a sole proprietorship under the applicable default classification rules.

A limited liability company (LLC) is a relatively new structure under state law for organizing a business. Under the default classification of an LLC with a single owner, the LLC is disregarded for federal taxation purposes as an entity separate from its owner. For an LLC with more than one owner, the default classification is a partnership. An election can also be filed by an LLC to be treated as a corporation instead of the applicable default classification.

Situation: KLM Tribe paid \$800 to Dr. Smith for services provided to a tribal member. When the Tribe contacted Dr. Smith for his EIN, he told them that he was incorporated so they didn't need to issue a Form 1099 to him.

Question: Is a Form 1099-MISC required for Dr. Smith?

Answer: Yes. KLM Tribe should issue a Form 1099-MISC to Dr. Smith. The exemption from issuing Form 1099-MISC to a corporation does not apply to payments for medical or health care services provided by corporations, including professional corporations.

Form 1099-MISC is required for payments of \$600 or more made to each physician or other supplier or provider of medical or health care services. If payment is made to a corporation, list the corporation as the recipient rather than the individual providing the services. Payments to persons providing health care services often include charges for injections, drugs, dentures and similar items. In these cases the entire payment is subject to information reporting. However, you are not required to report payments to pharmacies for prescription drugs.

In addition, you are not required to report payments to: 1) a tax-exempt hospital or extended care facility or 2) a hospital or extended care facility owned and operated by the United States (or its possessions), a state, the District of Columbia or any of their political subdivisions, agencies or instrumentalities.

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### 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, is available through the "Enhancing Federal Tax Compliance" link on the right-hand of the ITG web site landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes). You can also make an inquiry about the program via e-mail to [tege.itg.tefac@irs.gov](mailto:tege.itg.tefac@irs.gov).

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### Federal Tax Calendar for Third Quarter 2006

#### July 2006

Monday, July 3<sup>rd</sup> - Pull Tabs Annual Form 11-C due for tribe and all agents  
Thursday, July 6<sup>th</sup> - Make a deposit for 6/28-6/30\*  
Friday, July 7<sup>th</sup> - Make a deposit for 7/1-7/4\*  
Monday, July 10<sup>th</sup> - Employees report June tip income to employers if \$20 or more  
Wednesday, July 12<sup>th</sup> - Make a deposit for 7/5-7/7\*  
Friday, July 14<sup>th</sup> - Make a deposit for 7/8-7/11\*  
Monday, July 17<sup>th</sup> - Make a deposit for June if under the monthly deposit rule\*\*  
Wednesday, July 19<sup>th</sup> - Make a deposit for 7/12-7/14\*  
Friday, July 21<sup>st</sup> - Make a deposit for 7/15-7/18\*  
Wednesday, July 26<sup>th</sup> - Make a deposit for 7/19-7/21\*  
Friday, July 28<sup>th</sup> - Make a deposit for 7/22-7/25\*

## August 2006

Wednesday, August 2<sup>nd</sup> – Make a deposit for 7/26-7/28\*

Friday, August 4<sup>th</sup> – Make a deposit for 7/29-8/1\*

Wednesday, August 9<sup>th</sup> – Make a deposit for 8/2-8/4\*

Thursday, August 10<sup>th</sup> – Employees report July tip income to employers if \$20 or more

Friday, August 11<sup>th</sup> – Make a deposit for 8/5-8/8\*

Tuesday, August 15<sup>th</sup> – Make a deposit for July if under the monthly deposit rule\*\*

Wednesday, August 16<sup>th</sup> – Make a deposit for 8/9-8/11\*

Friday, August 18<sup>th</sup> - Make a deposit for 8/12-8/15\*

Wednesday, August 23<sup>rd</sup> – Make a deposit for 8/16-8/18\*

Friday, August 25<sup>th</sup> – Make a deposit for 8/19-8/22\*

Wednesday, August 30<sup>th</sup> – Make a deposit for 8/23-8/25\*

## September 2006

Friday, September 1<sup>st</sup> – Make a deposit for 8/26-8/29\*

Thursday, September 7<sup>th</sup> – Make a deposit for 8/30-9/1\*

Friday, September 8<sup>th</sup> – Make a deposit for 9/2-9/5\*

Monday, September 11<sup>th</sup> – Employees report August tip income to employers if \$20 or more

Wednesday, September 13<sup>th</sup> – Make a deposit for 9/6-9/8\*

Friday, September 15<sup>th</sup> – Make a deposit for 9/9-9/12\*

Make a deposit for August if under the monthly deposit rule\*\*

Wednesday, September 20<sup>th</sup> – Make a deposit for 9/13-9/15\*

Friday, September 22<sup>nd</sup> – Make a deposit for 9/16-9/19\*

Wednesday, September 27<sup>th</sup> – Make a deposit for 9/20-9/22\*

Friday, September 29<sup>th</sup> – Make a deposit for 9/23-9/26\*

\*= Make a Payroll Deposit if you are under the semiweekly deposit rule.

\*\*= Make a Payroll 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.

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## Return Filing Dates

### July 3rd

File Form 11-C (Occupational Tax) to register and pay the annual tax if you are in the business of taking wagers.

July 31st

File Form 941 for the 2nd quarter of 2006. If all deposits paid on time and in full, file by August 10th.

File Form 730 (Monthly Tax Return for Wagers) and pay the tax on applicable wagers accepted during June.

August 31st

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

October 2nd

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

Remember, if your tribe sells pull tabs, you must file Forms 11-C for the tribe and any agent(s) who sells pull tabs for the tribe by July 3rd.

Form 730 must also be filed each month.

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