



# ITG News



Keeping First Nations Informed

October 2007

Publication 4267D

Catalog Number 37831N

Great Plains Edition

## 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](http://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...*

### IN THIS ISSUE

Message from the Director	1
New Annual Filing Requirement for Small Tax Exempt Organizations	2
Transition Relief Period Extended on Pension Changes	3
Protecting Tribes and Tribal Members from Schemes	4
Poker Tournament Guidance Issued	5
E-Verify Helps Meet I-9 Responsibilities	5
How to Report Advanced Wages or a Loan	6
Common Misconceptions about Travel Funds	7/8
Tax Calendar for the 3rd Quarter 2007	9/10



## 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](http://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 which 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](http://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 which 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](mailto: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 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.

## 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](mailto:tege.itg.schemes@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.

**To add your name or e-mail address to our mailing list, please contact us via e-mail at [Carole.M.Oller@irs.gov](mailto:Carole.M.Oller@irs.gov) or call Carole Oller at (605) 787-5650**

## **E-Verify Helps Employers Meet their Form I-9 Responsibilities**

E-Verify is a free government service to verify, via the Internet, the employment eligibility status of newly-hired employees. E-Verify (formally known as the Basic Pilot/Employment Eligibility Verification Program) is administered by the U.S. Department Of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). The goals of E-Verify are to reduce unauthorized employment, minimize verification-related discrimination, be quick and non-burdensome to employers, and protect the privacy and civil liberties of employees.

For more information visit: <https://www.vis-dhs.com/empolyerregistration>

## **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), or you can make an inquiry about the program via e-mail to [tege.itg.tefac@irs.gov](mailto:tege.itg.tefac@irs.gov)



## How to Report Advanced Wages or a Loan

Is the money you are giving to your employees between paydays an advance on wages or a loan? If it is an advance on wages, are you reporting it properly? Most employers treat that money as an advance on unearned salary and will not include it in income, but that may not necessarily be correct. Revenue Rulings 68-239 and 69-337 discuss advances as wages and advances as loans.

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

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

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



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

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



## Common Misconceptions About Travel Funds

**Travel Reimbursements are Never Taxable**—Incorrect, depending upon the type of plan the employer has, the reimbursements for business travel may or may not be taxable.

There are two types of plans:

1. Accountable Plans—An accountable plan is not taxable to your employee. Amounts paid under an accountable plan are not wages and are not subject to income tax withholding and payment of social security, Medicare, and Federal Unemployment (FUTA) Taxes.
2. Nonaccountable Plans—A nonaccountable plan is taxable to your employees and is subject to all employment taxes and withholding.

Accountable Plans—(Nontaxable to your employees) In order to qualify as an accountable plan, your reimbursement or allowance arrangement **MUST** require that your employees meet ALL three of the following rules:

1. There must be a business connection to the expenditure.
2. There must be “adequate” accounting by the recipient within a reasonable period of time. This means that your employees must verify the date, time, place, amount and the business purpose of the expense. Receipts are required unless the reimbursement is made under a per diem plan.
3. Excess reimbursements or advances must be returned within a reasonable period of time.

Nonaccountable Plans—(taxable to your employees and are subject to all employment taxes and withholding) Your payments would be considered treated as paid under a nonaccountable plan if:

1. Your employee is not required to or does not substantiate timely those expenses to you with receipts or other documentation.
2. You advance an amount to your employee for business expenses and your employee is not required to and does not return timely any amount he or she does not use for business expenses.

**We Don't have to use Per Diem Rates**—Correct, you may reimburse your employees by actual expenses or per diem/fixed allowance expense.

For actual expenses, your employee is required to account to you for every travel expense incurred including actual transportation expense, lodging, each meal, every incidental expense, other business travel expense that is ordinary and necessary, time, place and business purpose of the travel.

Per diem rates is a daily allowance consisting of two components: lodging expense and meals and incidental expense. In order to utilize the per diem rates, it is necessary for your employee to stop for substantial sleep or rest to properly perform his/her duties while traveling away from home on business. In these cases, your employee is considered to have accounted to you if your reimbursement does not exceed per diem rates established by the Federal Government. Remember, even though there is a per diem lodging rate, your allowable lodging expense deduction is your actual cost and must be substantiated. The government per diem rate for meals and lodging in the continental United States are listed in Publication 1542, Per Diem Rates.

If the per diem or allowance paid exceeds the amounts specified, you must report the excess amount as wages. As of January 1, 2007, Revenue Ruling 2006-56 became effective. It tells employers that if they routinely pay per diem allowances in excess of the federal per diem rates, but do not track the

continued on next page



### **Common Misconceptions About Travel Funds-cont.**

allowances and do not require the employees either to actually substantiate all the expenses or pay back the excess amounts, and do not include the excess amounts in the employee's income and wages, then the entire amount of the expense allowances is subject to income tax and employment taxes.

**Any Receipt is Adequate**—Incorrect, you must be able to provide records that show details of amount, time, place or description, business purpose and business relationship.

A hotel receipt is enough to support expenses for business travel if it has all of the following information:

- The name and location of the hotel.
- The dates you stayed there.
- Separate amounts for charges such as lodging, meals and telephone calls.

A restaurant receipt is enough to prove an expense for a business meal if it has all of the following information:

- The name and location of the restaurant.
- The number of people served.
- The date and amount of the expense.

None of the above provides documentation of business purpose or business relationship. To prove these your employees should keep an account book, diary, statement of expense or similar record, showing the business purpose and business relationship.

**There is No Timeline to Turn In Receipts**—Incorrect, your employee must adequately account for these expenses within a reasonable period of time.

The definition of reasonable period of time depends on the facts and circumstances of each situation. However, regardless of the facts and circumstances of each situation, actions that take place within the times specified in the following list will be treated as taking place within a reasonable period of time.

- You receive an advance within 30 days of the time you have an expense.
- You adequately account for your expenses within 60 days after they were paid or incurred.
- You return any excess reimbursement within 120 days after the expense was paid or incurred.

**If I Don't Go on the Trip, I Don't Have to Pay Back the Travel Advance**—Incorrect, as stated above you need to return any excess reimbursement within 120 days after the expense was paid or incurred. Since no expense was incurred, the 120 days start once you received the advance. If you don't pay back the advance, your employer must include the advance in wages in box 1 of your Form W-2. You must report this advance as if it were wage income.

**We can Get Reimbursed if We Take Family Members on Our Business Trip**—Incorrect, if a spouse, dependent, or other individual goes with you or your employee on a business trip or to a business convention, you generally cannot deduct his or her travel expenses, nor can an employee get reimbursed for those expenses.

If you would like more information on travel expenses, *Publication 463, Travel, Entertainment, Gift and Car Expenses*, is a wonderful reference, or you can contact your local ITG Specialist.



# 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 Election Day 	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.

9 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 2006. 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.