

ITG News
Keeping First Nations Informed

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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

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.

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.

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.

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.

Nonresident Alien Issues Regarding Gambling Income

Nonresident Alien income can be divided into two categories:
Income effectively connected to a United States business, where income is taxed using graduated rates and deductions are allowed, or
Income not effectively connected to a United States business, where gross income is taxed at a flat rate and no deductions or losses are allowed unless provided by treaty.

In a court case regarding gambling winnings (*Barba v. United States*, 2C1.Ct.694 1983), the U.S. Court of Claims ruled that gambling winnings constitute income not effectively connected with a United States trade or business. Therefore, gambling winnings are subject to a flat tax of 30% under Internal Revenue Code (IRC) section 871(a) (1) and withholding under IRC section 1441(a). The court also ruled no deduction for losses would be allowed. Under the IRC sections

871(j) and 1441 (c) (11), gambling winnings from blackjack, baccarat, craps, roulettes, and big-6 wheel games are exempt from withholding.

If the individual is a Nonresident Alien, then a Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, is used to report payments made to a nonresident alien. Unlike the requirements for Form W-2G, there is no dollar threshold for withholding or reporting purposes.

How do you verify if the winner is a resident or nonresident alien?

If someone was not able to provide their valid driver's license and their social security number, then you might ask for a Passport or Visa. Usually, nonresident aliens are visitors from other countries. In some cases, the winner might not have a Passport or Visa.

Other ways of figuring if the winner is a resident or nonresident alien consist of performing a "Green Card Test" or "Substantial Presence Test" per IRC 7701(b). You are a lawful permanent resident of the United States at any time you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the immigration and Naturalization Service (INS) has issued you an alien registration card, also known as a "green card."

If a winner does not have a green card, then the casino might have to do a "Substantial Presence Test." If the winner was in the United States for more than 183 days for first year, then he or she meets the "Substantial Presence Test." The winner will be considered a U.S. resident for tax purposes if he or she meets the substantial presence test for the calendar year. (Regular commuters from Canada or Mexico do not count the days, which they commute to work in the United States from their residence in Canada or Mexico if they regularly commute from Canada or Mexico.) If the winner meets one of these tests, then the winner receives a W-2G.

EXAMPLE: A winner won a slot jackpot which requires the issuing of a W-2G or Form 1042-S. The winner did not have a valid driver's license, social security number, green card, or passport. The winner came to the U.S. ten years ago and was married to a U.S. citizen. Not too long after he was in U.S, he was incarcerated for 10 years in U.S. prison. He meets the "Substantial Presence Test" because he was in U.S. for more than 183 days for the calendar year. Therefore, he receives a W-2G.

Nonresident aliens may claim a lower withholding rate under a treaty, if applicable, by filing Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. Refer to Publication 901, U.S. Tax Treaties, and Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities for more information. The Form W-8BEN is used to receive a reduced rate or an exemption from withholding, as a resident from a tax treaty

country, but a winner still needs to provide a U.S. Taxpayer Identification Number to receive this treatment. If a winner is from a treaty country, but he or she does not have a U.S. Taxpayer Identification Number, then withhold at 30% on Form 1042-S.

If an individual does not have a social security number, then he or she can file a Form W-7 to obtain an "Individual Taxpayer Identification Number (ITIN)." An ITIN is a nine-digit number issued by the Internal Revenue Service to individuals who are not eligible to obtain a Social Security Number (SSN).

File paper Forms 1042-S with Form 1042-T, Annual Summary and Transmittal, to the Philadelphia Service Center by March 15th of the following year. Do not use Form 1042-T to transmit magnetic media, instead use Form 4804, Transmittal of Information Returns Reported Magnetically. If you file 250 or more Forms 1042-S during a year, then the casino must file using magnetic media.

Use Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, to report taxes withheld on gambling income of nonresident aliens. Form 1042 is filed with the Internal Revenue Service Center, Philadelphia, PA 19255-0607 by March 15th of the following year.

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. You can also make an inquiry about the program via e-mail to tege.itg.tefac@irs.gov.

Cellular Phones and Pagers

Tribal governments have to consider a number of issues that arise with respect to cellular phones and pagers used by Tribal Council Members and employees. This matter is complicated by the fact that the cell phones and pagers are used both for business and personal purposes.

Employers often provide employees with cell phones and pagers for use outside of the employer's premises in the performance of their duties. Cell phones and

paggers (and other items listed in IRC §280F) are considered "listed property." Because the nature of the property lends itself to personal use, strict substantiation requirements are in place. Employees are required to account for business and personal use.

"Listed Property"

. Business use is excludable from the wages of the employee as a working condition fringe benefit.

. Personal use is included in the wages of the employee.

. If substantiation requirements are not met, all use is included in the wages of the employee.

Substantiation Requirements

Records of business and personal use must be kept by the employee in order to determine whether the value of any of the use is included in the employee's wages.

Example: An employer provides an employee with a cell phone and pays the monthly charges. The employer requires the employee to highlight personal calls on the monthly bill. The employer includes the direct charges for personal use and a pro rata share of monthly fees and services in the wages of the employee. The business use is not taxable to the employee. The personal use is included in the wages of the employee.

Generally, if the working condition fringe benefit exclusion is not met, the personal use of an employer-provided cellular phone/pager is considered wages and subject to the withholding of federal employment taxes. Social security and/or Medicare withholding depends on the applicable coverage for the employee.

A. The tribal government provides an employee a cellular phone for business purposes. The tribe's written policy prohibits personal use of the phone. The tribe routinely audits the employee's phone billings to confirm that personal calls were not made. No personal calls were actually made by the employee. The business use of the phone is not taxable to the employee.

B. The tribal government provides an employee a cellular phone for business purposes. The tribe's written policy states that the phone is not intended for personal use and requires reimbursement from the employee for any personal calls. The tribe routinely audits the employee's phone billings to ascertain personal calls made. The employee reimburses the tribe for all personal calls made. The business use of the phone is not taxable to the employee.

C. The tribal government provides an employee a cellular phone for business purposes. The tribe's written policy prohibits personal use of the phone. The tribe does not, however, audit the employee's phone billings to confirm only business

use. The Fair Market Value (FMV) of the phone (one time value) plus the monthly phone service charge (ongoing) are taxable, reportable income to the employee.

D. The tribal government gives an employee an electronic pager for business purposes plus pays the monthly service charge for its employee. The tribe does not audit pager billing records. The FMV of the pager (one time value) plus the monthly pager service charge (ongoing) are taxable, reportable income to the employee.

E. The tribal government provides an employee with a cellular phone and pays the monthly charges. The tribe requires the employee to highlight personal calls on the monthly bill. The tribe includes the direct charges for personal use and a pro rata share of monthly fees in the wages of the employee. The business use portion of the phone is not taxable to the employee.

F. The tribal government allows an employee to use a personally owned cellular phone for tribal business. The tribe has established a written policy on the use and manner of reimbursement for such phones. The employee submits a signed copy of the employee's cellular bill highlighting work-related calls for which the employee is requesting reimbursement. The tribe reimburses the identified work calls on a pro rata share of the monthly fees after auditing the bill. The reimbursement of business related calls is not taxable to the employee.

G. The tribal government allows an employee to use a personally owned cellular phone for tribal business. The tribe has established a written policy on the use and manner of reimbursement for such phones. The tribe pays a flat rate monthly allowance to the employee for the use of the phone. The tribe does not require documentation identifying the personal and business use of the phone. The entire amount of the monthly allowance is taxable, reportable income to the employee.

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.

When Time Permits???

Some exempt organizations tend to feel that since there will be no “tax due” when they file their Forms 990 or Forms 990-EZ, then they are able to file the return when time permits.

The tax returns need to be filed by the 15th day of the month after the organization’s accounting period ends. If the return is not filed by the due date (including any extension granted), attach a statement giving the reasons for not filing on time.

To request an extension, use Form 8868 to request an automatic 3-month extension of time to file. The Form 8868 is also used to apply for an additional (not automatic) 3-month extension if the original 3 months was not enough time. In order to obtain this additional extension of time to file, you must show reasonable cause for the additional time requested.

The reason that it is extremely important to timely file your Forms 990 and/or extensions, is because under the Internal Revenue Code 6652(c)(1)(A), there is a penalty of \$20 per day, not to exceed the smaller of \$10,000 or 5% of the gross receipts of the organization for the year. This penalty may be charged when a return is filed late unless the organization can show that the late filing was due to reasonable cause.

Organizations with annual gross receipts exceeding \$1 million are subject to a penalty of \$100 for each day the failure continues (with a maximum penalty with respect to any return of \$50,000).

The penalties begin on the due date for filing the Form 990 or the Form 990-EZ.

For more information on Forms 990 and Form 990-EZ, please refer to Package 990-3.

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Federal Tax Calendar for Third Quarter 2006

July 2006

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

August 2006

Wednesday, August 2nd - Make a deposit for 7/26-7/28*

Friday, August 4th – Make a deposit for 7/29-8/1*
Wednesday, August 9th – Make a deposit for 8/2-8/4*
Thursday, August 10th – Employees report July tip income to employers if \$20 or more
Friday, August 11th – Make a deposit for 8/5-8/8*
Tuesday, August 15th – Make a deposit for July if under the monthly deposit rule**
Wednesday, August 16th – Make a deposit for 8/9-8/11*
Friday, August 18th – Make a deposit for 8/12-8/15*
Wednesday, August 23rd – Make a deposit for 8/16-8/18*
Friday, August 25th – Make a deposit for 8/19-8/22*
Wednesday, August 30th – Make a deposit for 8/23-8/25*

September 2006

Friday, September 1st – Make a deposit for 8/26-8/29*
Thursday, September 7th – Make a deposit for 8/30-9/1*
Friday, September 8th – Make a deposit for 9/2-9/5*
Monday, September 11th – Employees report August tip income to employers if \$20 or more
Wednesday, September 13th – Make a deposit for 9/6-9/8*
Friday, September 15th – Make a deposit for 9/9-9/12*
Make a deposit for August if under the monthly deposit rule**
Wednesday, September 20th – Make a deposit for 9/13-9/15*
Friday, September 22nd – Make a deposit for 9/16-9/19*
Wednesday, September 27th – Make a deposit for 9/20-9/22*
Friday, September 29th – 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.

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.
