



ITG News

Keeping First Nations Informed



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Message From The Director



As I write, we have just completed the initial meetings to listen to tribal input on the development of an IRS/Tribal Consultation Policy. The 12 meetings held during the past nine months took us to every area of Indian Country. Every one of them provided us with valuable ideas and was an enriching experience. I was particularly pleased by the enthusiastic response we received from many of the participants, and the open exchange of ideas not only gave us critical information from which to begin to frame a policy, but also gave us feedback on the successes and failures of our current relationship with tribes.

I want to thank each of you that took the time to contribute to this process. I realize that many of you were not able to join us. I also realize that many of you may still wish to submit comments and share ideas. That opportunity will arise starting in late January as we embark on the second phase of the policy development process.

By January 31st we will post a summary of each of the 12 meetings on our web site at www.irs.gov/tribes. I encourage each of you to review the comments contained therein. We will incorporate a link that will enable further comments to be submitted for a 90 day period, so that everyone can provide feedback on the input from the meetings. Following that period, we will begin to create a draft Consultation Policy that will be further shared for comment as we proceed to the final stages.

Once again, thanks to everyone who has participated to date. I look forward to the continuing involvement by all interested parties as we craft a policy that best meets the needs of all parties.

Christie Jacobs

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To add your name or e-mail address to our mailing list, please contact us via e-mail at Sandra.K.Leggett@irs.gov, or call Sandra Leggett at (909) 388-8115

Account or Tax Questions??
Call Customer Account Services at
1-877-829-5500



On-Line Employment Tax Guide

Employees from the office of Indian Tribal Governments recently completed a detailed Employment Tax Guide for Tribal Governments that has been posted to the ITG Internet site at www.irs.gov/tribes. The final document contains extensive narrative on withholding, deposit, and return filing requirements, as well as discussion on taxable benefits and remittance issues. Detailed examples are included as an aid to the proper completion of various forms.

We hope that this Guide is a useful reference source. We intend to update it regularly so that it remains current. We welcome your comments, as well as suggestions for further enhancements to both this on-line guide and our web site in general.

Federal Unemployment Tax Notices

The Consolidated Appropriations Act of 2000 provided that tribal entities did not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participated in State Unemployment Tax (SUTA) programs under either a contributory or reimbursement basis. While SUTA participation could result in savings to tribes, the Act also mandated that the electing tribal entity remain in compliance with the state programs in order to secure relief from FUTA. Any failure to pay amounts due to the state unemployment program results in the reactivation of the requirement to pay federal unemployment tax.

While it may seem that this change is relatively simple, it has added complexities. One issue is the need for the IRS and State Unemployment agencies to exchange information on tribal participation and compliance with SUTA. An additional complexity is the need to ensure that our records accurately reflect the filing requirement for each tribal entity, and are continually updated as SUTA participation and compliance changes.

As a result of these complexities, we have encountered several situations where tribes have received IRS notices soliciting Form 940, even though they are participating in SUTA and are in full compliance. We have determined that most of these notices are in error, and we are completing steps to correct our records. We apologize for any inconvenience, but we cannot guarantee that additional errors will not occur. If your entity receives a notice regarding Form 940, but is participating in SUTA and is in full compliance, **please contact your ITG Specialist as soon as possible**. We will investigate the matter, and either make the necessary correction in our records, or advise you why the notice was received.

Our web site at www.irs.gov/tribes contains an extensive listing of Frequently Asked Questions, that may assist you in resolving issues, including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer, or cannot reach your assigned ITG Specialist for assistance.



Tax Schemes in Indian Country

Abusive schemes to avoid taxation are a current area of focus by both the Internal Revenue Service and Congress. While tax shelters and offshore schemes have existed for several decades, they are receiving renewed interest in an era of globalization of our economy, and tight fiscal constraints for both businesses and governments.

Promoters of schemes to avoid or evade taxation have continually devised new “products” to market to anyone interested in saving money (and that will always be a large audience). In recent years, they have focused some attention on Indian tribes, with particular emphasis on exploiting their tax status as a government. The schemes include, but are not limited to:

- § joint ventures between tribes and outside parties, where income, deductions, and capital gains are not allocated between the parties during the life of the venture in the same manner as the amount of each party’s investment,
- § the misuse of sections of the law intended to benefit tribal entities, such as attempting to secure relief from FUTA by misrepresenting an entity as being tribally-owned, and
- § the misuse of tribal sovereignty or tribal enterprises to attempt to hide financial transactions from scrutiny by regulatory authorities.

If you are approached by someone who purports to have a business opportunity that is “too good to be true”, you need to be wary. Key considerations should include:

- § Is this the type of venture that governments usually enter?
- § Is the venture adequately supported by a reliable legal opinion from a disinterested third party?
- § Is the financial return equally balanced between the tribe and outside participants?
- § Is there substance to the transaction, or is it principally motivated as a tax avoidance scheme?
- § Is the promoter promising revenue to the tribe in exchange for tax savings to a third party?
- § What oversight role in the venture will the tribe have?

The office of Indian Tribal Governments wants to work with tribes to ensure that promoters of abusive schemes do not gain a foothold in Indian Country. To that end, we encourage you to contact us if you are approached by anyone promoting what appears to be an abusive scheme. We will be creating a link on our web site that will include updates on identified schemes, as well as an e-mail link to report any schemes. In the interim, you can contact Ken Voght by telephone at (716) 686-4860, or by e-mail at kenneth.g.voght@irs.gov to discuss or report schemes.

The office of Indian Tribal Governments is forming a special unit to work with tribes on this issue. Our Abuse Detection And Prevention Team welcomes the involvement of any tribal stakeholders in addressing this area, and ensuring that outside parties do not attempt to use tribal sovereignty and status as a cover for illegal or unethical activities. By partnering together in this area we can meet the interests of all governments in protecting revenues and mitigating potential problems for the future.



What Box Do I Use on the Form 1099?

Well, I guess a few of us tend to get a little confused when it comes to completing the Form 1099-MISC documents. Should I use **Box 3** or **Box 7** to report income?

On the Form 1099, there have been many Gaming Per Capita and Indian Gaming Revenue Sharing Trust Fund distributions (Non-Gaming Per Capita) reported in **Box 7** instead of **Box 3**. If you use **Box 7**, this is an indication of income which is subject to Self-Employment (SE) Tax.

Box 7 is used for all income that is “Non-Employee Compensation.” A non-employee is an individual or business that contracts work with an entity but is not hired as an employee of that entity. Generally, when a person has this type of income, he or she is considered Self-Employed for income tax purposes and prepares a Schedule C on his or her 1040 income tax return.

Gaming Per Capita and Indian Gaming Revenue Sharing Trust Fund distributions are amounts that are identified as **Other Income** and reported in **Box 3** of the Form 1099. The amounts are reported as “Other Income” on the individual’s income tax return which is **NOT** subject to SE Tax. At the end of the calendar year when the Form 1099’s are being prepared, a quick check to see that the amounts are in the correct box will help eliminate unnecessary work for your accounting department.

Information on Forms 1099 is processed and matched to the individual’s filed return. The IRS may assess Self-Employment (SE) Tax on the income amount noted in **Box 7** of Form 1099 even if an individual failed to report the income on their return. This situation is cumbersome to fix after the fact and can be a major inconvenience to the individual and potentially to the tribe. For that reason, be aware when reporting amounts on Form 1099.

If you have any questions, please contact your Indian Tribal Governments (ITG) Specialist for assistance.



DISASTER ASSISTANCE

The recent fires in Southern California affected several tribes, and many tribal members and employees. Incidents such as this are not something anyone likes to contemplate, but, all tribes need to be prepared to deal with a variety of natural disasters, especially those located in areas of potential fires or flooding.

Though it may be all but impossible to prepare for every eventuality, especially in California, the IRS office of Indian Tribal Governments (ITG) can help you deal with many issues that may arise.

As the fire disaster was unfolding, the Western ITG Group put together a package of information for the tribes and individuals, and developed a plan to help them cope with this series of events.

This package included:

- FEMA information, including location and hours for sites in the area
- The IRS Disaster Kits for Individuals and Businesses (Publications 2194 and 2194B)
- Insurance company phone numbers and instructions on what to do if a residence was burned, including detailed information on cleaning smoke and ashes
- IRS procedures for amending income tax returns
- Information on temporary relief granted by IRS for filing and payments
- Revenue Rulings dealing with disaster payments to individuals
- Information on how to deal with contributions made to tribes for employees and tribal members

Specialists visited each reservation in Southern California and provided the packages and additional information applicable to each tribe. This also included what other IRS assistance could be provided at the FEMA sites. They met with tribal officials to coordinate further visits and any other information as needed.

Much of this information is applicable only when a declared disaster occurs. However, it can help any one who may need it. Do not hesitate to call your ITG Specialist with any questions you may have.



Federal Unemployment Tax Refunds (FUTA TAX)

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

Have you made payments to your State for Unemployment Tax for your workers or have you made an agreement to reimburse the State for payments of Unemployment benefits paid to your employees?

If your answer to either of the above questions is yes, you are exempt from FUTA taxes for years ending after December 20, 2000. As such, you are entitled to a refund of all Federal Unemployment Taxes (FUTA) that you paid for tax years 2000, 2001, and 2002.

Treasury Announcement 2001-16, February 20, 2001, 2001-8 I.R.B. page 715 allows tribes to reimburse the states for any unemployment taxes and to elect to exclude payment of FUTA taxes after December 20, 2000. A transition rule in Public Law Number 106-554, 114 Stat. 2763, allows for the electing tribe to exclude the FUTA for the year 2000 if unemployment taxes have been paid to their respective state.

Contact your local Indian Tribal Government Specialist to obtain instructions for claiming your refund of FUTA.

Any claims for the 2000 tax year must be filed before January 31, 2004.

Any claims for the 2001 tax year must be filed before January 31, 2005.

Any claims for the 2002 tax year must be filed before January 31, 2006.

!! ALERT !!

Claims for refunds of FUTA taxes paid for tax year 2000 must be received by the Internal Revenue Service before January 31, 2004.

Federal Tax Calendar for First Quarter 2004

January 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 * Payroll date 12/27-12/30	6	7 * Payroll date 12/31-1/2	8	9 * Payroll date 1/3 -1/6	10
11	12 Employees report December tips to employer	13	14 * Payroll date 1/7 -1/9	15 ** Monthly payroll/non-payroll tax deposit for December	16 * Payroll date 1/10-1/13	17
18	19	20	21	22 * Payroll date 1/14-1/16	23 * Payroll date 1/17-1/20	24
25	26	27	28 * Payroll date 1/21-1/23	29	30 * Payroll date 1/24-1/27	31

February 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Issue Forms W-2/W-2G/1099 to recipients of income	3	4 * Payroll date 1/28-1/30	5	6 * Payroll date 1/31-2/3	7
8	9	10 Employees report January tips to employer	11 * Payroll date 2/4 -2/6	12	13 * Payroll date 2/7 -2/10	14
15	16	17 ** Monthly payroll/non-payroll tax deposit for January	18	19 * Payroll date 2/11-2/13	20 * Payroll date 2/14-2/17	21
22	23	24	25 * Payroll date 2/18-2/20	26	27 * Payroll date 2/21-2/24	28
29						

* = 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 are due one day prior to the dates listed.

March 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 File Forms W-3 and 1096 filed by paper or magnetic media	2	3 * Payroll date 2/25-2/27	4	5 * Payroll date 2/28-3/2	6
7	8	9	10 * Payroll date 3/3-3/5 Employees report February tips to employer	11	12 * Payroll date 3/6-3/9	13
14	15 ** Monthly payroll/non-payroll tax deposit for February	16	17 * Payroll date 3/10-3/12	18	19 * Payroll date 3/13-3/16	20
21	22	23	24 * Payroll date 3/17-3/19	25	26 * Payroll date 3/20-3/23	27
28	29	30	31 * Payroll date 3/24-3/26 File Forms W-3 and 1096 filed electronically			

* = 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 are due one day prior to the dates listed

Return Filing Dates

By February 2

File Form 941 for the fourth quarter of 2003. If the tax was deposited in full and on time, file by February 10.

File Form 940 if not participating and compliant with State Unemployment, or not an entity 100% owned by the tribe. If the tax was deposited in full and on time, file by February 10.

File Form 730 on applicable wagers accepted during December 2003.

File Form 945 for 2003. If the tax was deposited in full and on time, file by February 10.

By March 1

File Form 730 for applicable wagers accepted during January 2004.

File Form 8027 for food and beverage establishments meeting the 80 equivalent hour test.

By March 31

File Form 730 for applicable wagers accepted during February 2004.

For entities with Tip Rate Determination Agreement or a Gaming Industry Tip Compliance Agreement, file the annual report required by the agreement.