



ITG News

Keeping First Nations Informed



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Message From The Director

We recently completed our initial Consultation Listening meeting, which was held on November 30th in Anchorage. I want to thank all of the participants, who provided input on pending federal tax issues, and discussed various concerns involving federal tax administration. This meeting was part of our commitment to meet at least once every three years with interested tribal leadership in each of the 12 BIA regions.

We have scheduled the next Consultation Listening meeting in conjunction with the United South and Eastern Tribes (USET) as part of their Impact Week meeting. The specific date and location for this meeting is:

Tuesday February 7th - 11:00 AM—1:00 PM
Crystal Gateway Marriott
1700 Jefferson Davis Highway
Arlington, Virginia 22202

Those who are unable to attend this meeting can participate in similar meetings to be held in other areas of the country, which will be announced in future issues of ITG News and on our web site. In addition, tribal representatives can submit written input or inquiries at any time through the e-mail link on the bottom of our Consultation web page, or by writing to me at:

Internal Revenue Service
SE:T:GE:ITG
1111 Constitution Avenue NW
Washington, DC. 20224.

In addition to the Listening meetings, an Indian Tribe or group of Indian Tribes may invoke consultation on any issue or IRS action that may impact, or is impacting them. A Tribe may also request consultation where it desires to seek the input of the IRS on the potential federal tax consequences of economic opportunities, local laws, agreements, or similar matters that may affect, or be of interest to, the Indian Tribe. All such requests may be submitted at any time via e-mail to tege.itg.consultation@irs.gov.

As always, if you would like to discuss any issue, please feel free to contact me at Christie.Jacobs@irs.gov, or via telephone at (202) 283-9800.



IN THIS ISSUE

Message from the Director	1
Introducing Form 944	2
Customer Satisfaction Survey Results	3
Reporting Employee Theft and Embezzlement	4
New Mileage Rates for 2006	4
Withholding on Non-Employee Payments	5
Using Withholding Tables for Per Capita Payments	6
Form W-9, What Is It Used For?	7
Tax Calendar for the 1st Quarter	8/9

Christie Jacobs



Introducing Form 944 – Employer’s Annual Federal Tax Return

To reduce the burden on small employers, the IRS has simplified the rules for filing employment tax returns. Starting with calendar year 2006, certain employers will need to file new Form 944, Employer’s *Annual* Federal Tax Return, instead of Form 941, Employer’s *Quarterly* Federal Tax Return. Form 944 must be filed by employers whose liability for social security, Medicare and withheld federal income taxes for the calendar year is \$1,000 or less, unless:

- You file Form 941 electronically,
- You expect to pay annual wages totaling more than \$4,000,
- You expect your annual liability for social security, Medicare, and withheld federal income taxes to be more than \$1,000,
- You have only farm employees (required to file Form 943, *Employer’s Annual Tax Return for Agricultural Employees*) or
- You have only household employees (required to file Form 942, *Employer’s Quarterly Tax Return for Household Employees*.)

The IRS will directly notify employers who are required to file Form 944. If you believe you are eligible, but are not notified, you can contact the IRS at 1-800-829-0115 to determine your eligibility. **Do NOT file Form 944 unless directed to do so by the IRS.**

We will be posting links to the new Form 944 and instructions on our web site at www.irs.gov/tribes. In addition, we will be updating Publication 4268, *Employment Tax Desk Guide for Indian Tribal Governments*, to include specific information on this new form. As always, you can also contact your local ITG Specialist if you have any questions concerning this new provision.

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.

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

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.

Customer Satisfaction Survey Results Published

The Office of Indian Tribal Governments recently completed its third annual customer survey, to obtain feedback from our customers that will allow us to measure customer satisfaction with our products and services, and to determine areas where we need to effect operational changes.

We want to thank everyone who participated. We received input from 187 of the 564 federally-recognized Tribes, representing a 33% response rate. This was a slight decrease from 2004, but is a major improvement from the initial survey completed in 2003. While the overall level of satisfaction is a key measure, ITG tabulates the responses to each question, and analyzes them by subject area and the geographic location of the respondents. The following chart provides a general summary:

	Eastern/ Oklahoma Area	Great Plains/ Great Lakes Area	Southwest Area	California/ Nevada Area	Pacific Northwest Area	Alaska Area
Level of Burden on Tribes/ Delivery of Information to Tribes						
Satisfied	69%	75%	64%	71%	59%	58%
Neutral	23%	16%	18%	20%	32%	34%
Dissatisfied	7%	9%	18%	10%	8%	8%
Proper Collaboration with Tribes						
Satisfied	64%	65%	46%	64%	45%	50%
Neutral	26%	33%	23%	23%	45%	37%
Dissatisfied	10%	2%	30%	13%	10%	13%
Adherence to Proper Protocol/ All Tribes Treated Equally						
Satisfied	70%	71%	63%	71%	49%	53%
Neutral	24%	27%	29%	28%	48%	44%
Dissatisfied	6%	3%	9%	1%	3%	3%
Recognition of Tribal Status and Sovereignty Issues						
Satisfied	77%	82%	63%	73%	62%	53%
Neutral	13%	13%	20%	23%	34%	40%
Dissatisfied	10%	5%	18%	5%	3%	8%
Accuracy/ Timeliness/ Honesty in IRS Actions						
Satisfied	58%	50%	52%	71%	48%	46%
Neutral	33%	47%	36%	23%	43%	45%
Dissatisfied	9%	3%	13%	5%	10%	9%
Overall Level of Satisfaction						
Satisfied	78%	87%	71%	82%	68%	60%
Neutral	17%	7%	14%	15%	24%	36%
Dissatisfied	4%	7%	14%	3%	8%	4%

A report on the survey is posted to our web site at www.irs.gov/tribes. The Office of Indian Tribal Governments will be developing and implementing actions to effect improvements, with a particular focus on Collaboration and Timeliness concerns expressed by respondents. We look forward to input at the ongoing Consultation Listening meetings (see Message From the Director on page 1) to further assist in determining improvements.

Reporting Employee Theft and Embezzlement

Unfortunately, all businesses and governmental entities can be victimized by employee theft and embezzlement. While most Tribes have enacted a system of internal controls that significantly minimizes the risk, virtually everyone has encountered this issue.

In most cases, the offending employee is terminated by the Tribe. In some cases, the Tribe may attempt to recover the stolen funds through tribal court action, or by referral to local, state, or federal authorities for possible prosecution or issuance of a judgment. This is not always possible, since the amount may be insufficient to warrant legal action, or since the employee may have fled the area.

The Office of Indian Tribal Governments is interested in these type of cases, since monies illegally obtained through theft or embezzlement are subject to federal taxation. Whether the offending individual is prosecuted or not, we can tax their illegally obtained gain, meaning that they will never completely "get away" with their criminal activity.

If you encounter a theft or embezzlement perpetrated by an employee, please provide us with the specific information by contacting us at tege.itg.schemes@irs.gov, or calling Randy Johnson at (405) 297-4407.

IRS Announces 2006 Standard Mileage Rate

The Internal Revenue Service issued the 2006 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning January 1, 2006, the standard mileage rates for the use of a car (including vans, pickups or panel trucks) will be:

- **44.5 cents per mile** for business miles driven
- 18 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations, other than activities related to Hurricane Katrina relief

The new rate for business miles compares to a rate of 40.5 cents per mile for the first eight months of 2005. In September, the IRS made a special one-time adjustment for the last four months of 2005, raising the rate for business miles to 48.5 cents per mile in response to a sharp increase in gas prices, which topped \$3 a gallon.

Revenue Procedure 2005-78 contains additional information and limitations on the use of the standard Mileage rates.





Withholding on Non-Employee Payments

There are many payments made to non-employees at the tribal office and other Tribal entities that require withholding and the filing of information returns. (Required withholding for gambling winnings will not be covered in this article.)

In most instances withholding is required from payments made to, or for the benefit of, Tribal members from the profits of the gaming enterprise. These **Per-Capita payments** are reported on Form 1099-MISC. Payments that exceed certain thresholds require withholding. Tables can be found in Publication 15-A which provide thresholds and percentages. There is a separate article in this newsletter which discusses the use of these tables.

Payments made to tribal members from the **California Revenue Sharing Trust Fund ("RSTF")** are also reported on Form 1099-MISC. Although RSTF payments do not require withholding, Tribal members may request withholding be done on their behalf.

Backup withholding is required when a payee does not provide their Taxpayer Identification Number ("TIN") prior to a reportable payment being made. The Form W-9 may be used for the payee to provide their TIN and, if applicable, to indicate exemption from Form 1099 filing. If the TIN is not provided and the payment is made without the required withholding, the payor (the Tribal enterprise and ultimately the Tribe) can be held liable for the withholding that was required. The backup withholding rate for 2006 is 28% of the reportable payment.

In determining which payments are subject to backup withholding, it is first necessary to determine which payments are reportable. The IRS publishes "Instructions for Form 1099-MISC, Miscellaneous Income", which provides details on which payments are to be reported. For example, payments of at least \$600 during a calendar year for services, rent, prizes and awards, other income payments, and certain non-wager gaming related payments are reported on the Form 1099-MISC, unless the payee is exempt. A separate article in a future issue of this newsletter will address additional Form 1099 filing issues.

Withholding that occurs from payments to non-employees must be deposited with the IRS. Generally, the withheld amounts are to be deposited by electronic funds transfer or at an authorized financial institution using Form 8109. See Circular E (Pub. 15) for a detailed discussion of deposit requirements. Penalties are imposed when these withheld amounts are not deposited on a timely basis. Deposits made for withholding from Forms 1099 are credited to the Form 945. The Form 945 is an annual return that is required to be filed no later than January 31 of the following year.

Hopefully this article has been helpful in addressing withholding on non-employee payments. If you have any questions or concerns about the content of this article, please contact your ITG Specialist.



Use of Proper Withholding Tables for Per Capita Payments

Reporting Requirements of Per Capita Distributions – The Internal Revenue Code Section 3402(r) provides that, “Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment’s proportionate share of the annualized tax.”

Class II. Class II includes (1) bingo and similar games, such as pull tabs, punch boards, tip jars, lotto, and instant bingo, and (2) card games that are authorized by the state or that are not explicitly prohibited by the state and played at a location within the state.

Class III. A Class III gaming activity is any gaming that is not Class I or Class II. Class III includes horse racing, dog racing, jai alai, casino gaming, and slot machines.

The IGRA mandates that gaming revenues are to be taken into account in computing the income tax of a member when the net gaming revenue is paid to that member as a per capita payment. For those who receive their per capita payments outright, the year of income inclusion generally is the year of receipt.

Withholding Requirements of Distributions from Net Gaming Revenue – Identifying the initial source of funds used for the per capita distribution is an important aspect of reporting requirements. Unless specifically exempt from taxation, the amounts that make up the per capita distributions are taxable and subject to the requirements of filing IRS Form 1099-MISC, *Statement for Recipients of Miscellaneous Income*. A per capita distribution could be derived from many sources, including the profits from a tribal business other than a Class II or III gaming operation, interest income on investments, or rental payments from tribal lands. All these payments would require a tribe to prepare Form 1099 when a payment is made to the tribal member.

It is only the amount distributed from net gaming revenue of any Class II or Class III gaming activity conducted or licensed by such tribe that is subject to withholding. The tribe cannot elect an alternative method such as Form W-4, which would give tribal members a different withholding amount than the amounts reflected in IRS Publication 15-A, *Employer’s Supplemental Tax Guide*.

To figure the amount of tax to withhold each time you make a payment, use the tables found in Pub. 15A’s chapter entitled, “Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members,” for the period for which you make payments. For example, if you make payments weekly, use Table 1; if you make payments monthly, use Table 4.



“It is only the amount distributed from net gaming revenue of any Class II or Class III gaming activity conducted or licensed by such tribe that is subject to withholding.”



Form W-9, What Is It Good For?

As the calendar year comes to a close, it will soon be time to review your records to determine who should be sent a **Form 1099-MISC**. For most, this form will be filed for payments for nonemployee compensation, rents, etc. These forms have to be sent to the recipients by January 31 and mailed to the IRS by February 28, or filed electronically by March 31.

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 W-9 form you are able to secure from the taxpayer all the necessary information needed for completing a Form 1099-MISC.** The taxpayer signs Form W-9 under penalties of perjury 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 that the Name/TIN does not match, having a W-9 form on file will help you avoid potential penalties.**

A good practice would be to secure the W-9 from a vendor before any work or services are provided. Many businesses when they seek 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 their TIN, you should do backup withholding 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, and while this does not sound like much, it can add up fast. Just 50 incomplete returns can result in a \$2,500 penalty.

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 make sure that they indicate whether they are a corporation, partnership or single-owner LLC. An Individual or Sole proprietor can provide either their Social Security Number (SSN) or Employer Identification Number (EIN). If an EIN is provided, make sure the Business name line is completed.

In a casino Form W-9 can come in handy by securing the SSN from a patron when there is 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 most casinos require the patron to provide a driver's license and social security card. With identity theft being the problem that it is, 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 under Forms and Publications.

Federal Tax Calendar for First Quarter 2006

January 2006

SUN	MON	TUE	WED	THU	FRI	SAT
1 Stop advance payments of EITC for any employee not filing a new Form W-5	2	3	4	5 * make a deposit for 12/28-12/30	6 * make a deposit for 12/31-1/3	7
8	9	10 Employees report December tip income to employers if \$20 or more	11 * make a deposit for 1/4-1/6	12	13 * make a deposit for 1/7-1/10	14
15	16	17 ** Make a deposit for December if under the monthly deposit rule	18	19 * make a deposit for 1/11-1/13	20 * make a deposit for 1/14-1/17	21
22	23	24	25 * make a deposit for 1/18-1/20	26	27 * make a deposit for 1/21-1/24	28
29	30	31 Give employees copies of their Forms W-2 for 2004, and give annual information statements (Forms 1099, 1098, 5498, and W-2G) to all recipients of reportable payments				

February 2006

SUN	MON	TUE	WED	THU	FRI	SAT
			1 * make a deposit for 1/25-1/27	2	3 * make a deposit for 1/28-1/31	4
5	6	7	8 * make a deposit for 2/1-2/3	9	10 * make a deposit for 2/4-2/7 Employees report January tip income to employers if \$20 or more	11
12	13	14	15 * make a deposit for 2/8-2/10 ** Make a deposit for January if under the monthly deposit rule	16	17 * make a deposit for 2/11-2/14	18
19	20	21	22	23 * make a deposit for 2/15-2/17	24 * make a deposit for 2/18-2/21	25
26	27	28				

*= 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 2006

SUN	MON	TUE	WED	THU	FRI	SAT
			1 * make a deposit for 2/22-2/24	2	3 * make a deposit for 2/25-2/28	4
5	6	7	8 * make a deposit for 3/1-3/3	9	10 * make a deposit for 3/4- 3/7 Employees report February tip income to employers if \$20 or more	11
12	13	14	15 * make a deposit for 3/8-3/10 ** Make a deposit for February if under the monthly deposit rule	16	17 * make a deposit for 3/11-3/14	18
19	20	21	22 * make a deposit for 3/15-3/17	23	24 * make a deposit for 3/18-3/21	25
26	27	28	29 * make a deposit for 3/22-3/24	30	31 * make a deposit for 3/25-3/28	

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule. NOTE: Deposits made through EFTPS are due one day prior to the dates listed.
 **= Make a Monthly Deposit if you qualify under that rule.

Return Filing Dates

January 3rd

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

January 31st

- > File Form 941 for the 4th quarter of 2005. If all deposits paid on time and in full, file by February 10th.
- > File Form 940 for 2005 if liable for Federal Unemployment Tax (not participating or current with state unemployment tax). If all deposits paid on time and in full, file by February 10th.
- > File Form 730 and pay the tax on applicable wagers accepted during December.
- > File Form 945 for 2005. If all deposits paid on time and in full, file by February 10th.
- > File Form 943 for 2005 (agricultural entities). If all deposits paid on time and in full, file by February 10th.

February 28th

- > File information returns for all payments reported to recipients on Forms 1099, 1098, 5498, and W-2G, using Form 1096 as a transmittal. If filing these forms electronically, file by March 31st.
- > File Form W-3, along with copy A of Forms W-2 you issued for 2005. File by March 31st if filing electronically.
- > File Form 730 and pay the tax on applicable wagers accepted during January.
- > File Form 8027 if you are a large food and beverage establishment. File by March 31st if filing electronically.

March 31st

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