

ITG News
Keeping First Nations Informed

Alaska Edition
Publication 4267-A
Catalog Number 37827F
July 2007

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Message From the Director

Our last issue of ITG News highlighted some of the results from our 2006 Customer Satisfaction Survey, and outlined some areas where ITG would be taking steps to effect operational changes. Several of those areas focused on communications, and specifically the challenges presented by the movement of personnel, offices, and evolving communication technology.

There is an old saying that "there is nothing as constant as change". The world around us changes so quickly that it is often difficult to keep pace. We utilize technology such as cell telephones, laptop computers, and the worldwide web, to communicate and attempt to stay abreast of changing events. However, change is not limited to technology; it also includes changes in personnel and personal relationships. All of us experience transitions in staffing. Key employees move into other positions, retire, or resign. Tribal enterprises and the IRS office of Indian Tribal Governments are not immune from those changes.

Recognizing this, in conjunction with feedback from the 2006 survey, has led ITG to implement several actions designed to improve the way we interact. These include:

ITG has created a listing on the ITG web site landing page of each tribe and their assigned ITG Specialist and telephone number. This listing will be refreshed every time a change is made in personnel or in telephone numbers.

ITG has created a back-up telephone number (202-283-9800) to reach an ITG employee in the event that a tribe's assigned ITG Specialist is not available. We will guarantee a return telephone call within 24 hours.

ITG will be disseminating information on reporting changes in tribal personnel or contact points to the IRS. For example, page 2 of this edition of ITG News contains an article on reporting address changes.

We will be continuing to seek opportunities to improve communications. I welcome your ideas, whether through future Customer Satisfaction Surveys, Consultation Listening meetings, or via e-mail to me at christie.jacobs@irs.gov.

Christie Jacobs

Successful Training in Anchorage

Recently, the office of Indian Tribal Governments (ITG) held three different Employment Tax Workshops in the Anchorage office of the Internal Revenue Service. Originally, a single 2-day class was offered for April 24th and 25th. The response was so great that the class filled up quickly. We then offered a second 2-day class for April 26th and 27th. When this second class also filled up, a third class was offered for May 7th and 8th.

Over the three different sessions, sixty-seven (67) individuals attended and fifty-four (54) villages were represented. Feedback from the participants was very favorable. ITG Specialists Mary Jo Audette and Judy Pearson presented the workshop and covered topics that included:

Defining Employees vs. Independent Contractors

Computing the correct taxes for payroll

Completing Form 941 Quarterly Employment Tax Return

Making federal tax deposits

Due Dates on Tax Returns

Completing Forms W-2/W-3 and 1099/1096

Reconciling Forms 941 and W-2 at year end

Avoiding penalties

Meeting rules for an Accountable Plan for Per Diem & Travel Reimbursements

Pull tab and gaming excise tax filing requirements

We plan to offer similar training in Anchorage every Spring. So keep a reminder on your calendar if you would like to attend next year.

Improving Bank Secrecy Act Compliance

IRS continues to work closely with tribal entities to assess their Bank Secrecy Act (BSA) Compliance programs in an effort to ensure they have the tools and resources necessary to meet federal regulations. Our work includes Outreach/Education for affected tribal employees, BSA Compliance Checks to help identify material weaknesses, and examinations to identify compliance failures. The office of Indian Tribal Governments (ITG) undertakes Outreach/Education and BSA Compliance Checks while dedicated staff from our Small Business/Self Employed Division conducts BSA examinations on all entities.

ITG's work in this regard has identified many significant problems in tribal entity BSA compliance including:

- Written BSA Compliance Plans do not exist or are superficial
- No experienced BSA Compliance Officer
- No ongoing training of affected entity staff
- Extreme reluctance to file Suspicious Activity Reports
- Little or no testing to validate BSA procedures are being followed

The BSA examination staff completed 13 examinations of tribal casinos during the initial six months of this year, and 12 of them resulted in determinations that material violations of Bank Secrecy Act regulations had occurred.

These findings show that improvements in BSA compliance are a major issue that tribes face, and ITG stands ready to assist them in determining changes that may be required. However, tribal entities must first recognize that improvements may be required and then must be willing to work with ITG to implement those changes.

If you have questions regarding the Bank Secrecy Act or have an interest in determining where compliance improvements could be made, please contact your assigned ITG Specialist.

Consultation Listening Meeting Scheduled for Oklahoma City

In accordance with the Consultation procedures utilized by the Internal Revenue Service, ITG holds Consultation Listening meetings on a rotating basis throughout Indian country. The meetings are open to any tribal representatives and provide an opportunity to surface concerns, ask questions, provide input and suggestions to ITG, and dialogue with other tribal representatives concerning federal tax issues. Our objective is to hold a meeting within each of the 12 BIA regions at least once every three years.

Our next meeting has been scheduled for Oklahoma City, Oklahoma on Thursday August 2nd. The meeting will be held from 1:00-4:00pm at:
Embassy Suites
1815 South Meridian Avenue
Oklahoma City, Oklahoma 73108

In order that we can adequately plan for the meeting, we ask that those wishing to attend register for the meeting through a link on our web site at www.irs.gov/tribes.

We plan to hold four meetings next year— in Alaska, the Pacific Northwest, Montana, and Phoenix. The specific dates, times, and locations for those meetings will be announced on our web site and via direct mailings to the tribes in those areas.

Who Receives Your Letters from the IRS? Is this the Correct Person?

If not, has this caused delays in responding and created unnecessary penalties or assessments? Here is how to correct the situation:

Form 8822 is used to make the appropriate changes. Part II of the form is used to change your business mailing address. Enter the returns that the change is being made for on line 8 or 9. Enter your business name on line 11a and your Employer Identification number on line 11b. Enter the old mailing address on line 12. The “in care of” (c/o) information should be entered on line 13 with the name of the person who should be receiving IRS correspondence. The business location information is entered on line 14.

An owner, officer, or representative must sign the form. An officer is the president, vice-president, chairman, vice-chairman, chief accounting officer, community service coordinator, office specialist, comptroller, etc.

File the form with the appropriate IRS Service Center as listed on the instruction page of form 8822. The form is available online at <http://www.irs.gov/pub/irs-pdf/f8822.pdf>.

Assess Your Own Level of Federal Tax Compliance

ITG continues to offer a self-assessment program where qualifying tribal entities can perform their own Compliance Checks. In order to qualify, the tribal entity must be current in the filing of all required federal tax returns and must have fully paid all federal tax liabilities. They are then able to apply to perform a “self-Compliance Check” by submitting a request through the “Enhancing Federal Tax

Compliance” link on the landing page of the ITG web site at www.irs.gov/tribes or by notifying ITG in response to a contact we might initiate.

A special template with fill-in-the blank responses is utilized in conjunction with a special web page with linkages to reference material that will assist tribes in both understanding the process as well as in completing their own Compliance Check.

As part of this process, tribal entities performing their own Compliance Check have the opportunity to effect any corrective actions. An ITG Specialist assists in that process and will mitigate any penalties wherever possible. For example, if a tribal entity discovered during a self-Compliance Check that they had not filed required Forms 1099, the entity could make a self correction without risk of penalty.

There are several advantages that a tribe can realize through this process. Among them are:

Existing tribal finance staff might gain added insights into key federal tax administration issues that impact their positions and the tribal entity.

A new tribal finance officer could utilize a self assessment to establish a baseline of current federal tax compliance. It would improve their knowledge of the tax issues within the specific entity and allow them to remedy any problems that might pre-date their assumption of tax responsibilities.

A tribal entity might identify a potential area of noncompliance that they wish to surface to ITG and remedy with minimal risk or cost.

This initiative empowers tribes to self-assess federal tax compliance and effect improvements. We look to further participation by tribal entities who believe they might benefit.

Pull Tab Sales - Tribe's and Seller's Filing Requirements

Tribes selling Pull Tabs are required to file two types of returns—(1) Form 11-C, Occupational Tax and Registration Return for Wagering, and (2) Form 730, Monthly Tax Return for Wagers. Persons selling Pull Tabs are also required to file a Form 11-C.

Form 11-C is an annual return which applies to persons selling Pull Tabs whether they receive compensation or are volunteers. Both the tribal government and agents (persons who sell Pull Tabs on behalf of the tribe) must file Form 11-C to register and to pay the occupational tax before wagers are accepted and annually thereafter. Generally, the amount of the occupational tax is \$50 per year per person.

The agent has a unique Employer Identification Number (EIN) for purposes of the Form 11-C Occupational Tax. Even though the tribe typically prepares the Form 11-C for the agent and pays the \$50 fee on the agent's behalf, the agent is required to sign the return. A copy of this return should be given to the agent for their records.

Once Form 11-C returns stop being filed under the agent's EIN, he/she may receive Notice CP 515 requesting a Form 11-C for tax period 07-01-200X. If the agent is no longer selling pull tab, he/she should immediately respond to the notice with the statement "The last month I sold Pull Tabs for XYZ Tribe was MM/YYYY. I do not have a filing requirement for the period listed." Of course, if the agent is still selling Pull Tabs, a return must be filed for the missing period.

Form 11-C has an unusual due date in that it is due the first day of the fiscal year, and the year runs from July 1st through June 30th. As such, the due date for Form 11-C for the tribe and any active agents for the period starting July 1, 2007 and ending June 30, 2008 is July 1, 2007.

If you or your agents have not filed this form in the past and your tribal entity has sold Pull Tabs any time since January 2001, you will need to complete and file Forms 11-C for the periods:

July 1, 2001 through June 30, 2002	due July 1, 2001
July 1, 2002 through June 30, 2003	due July 1, 2002
July 1, 2003 through June 30, 2004	due July 1, 2003
July 1, 2004 through June 30, 2005	due July 1, 2004
July 1, 2005 through June 30, 2006	due July 1, 2005
July 1, 2006 through June 30, 2007	due July 1, 2006
July 1, 2007 through June 30, 2008	due July 1, 2007

Form 730, Monthly Tax Return for Wagers, is a monthly return that must be filed by the last day of the month following the month for which taxable wagers are reported. The wagering (gambling) tax is imposed on gross wagers (pull tab sales) received and is based on the total amount received before any payout of prizes or other expenses. If the wager is authorized under the law of the state in which it is accepted, the rate of tax is 0.25 percent of the amount of the wager. Thus, if the gross wagers (pull tab sales) for the month are \$10,000, the tax is \$25.00 ($\$10,000 \times .0025$).

If you have not filed this form in the past and your tribal entity has sold Pull Tabs any time since January 2001, you will need to complete and file Forms 730 for each month you sold Pull Tabs.

Employee or Independent Contractor

A person who works for you may be classified as a common law employee, a statutory employee or an independent contractor. Generally, an employer/employee relationship exists when the tribe for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer.

In determining whether a worker is an employee or an independent contractor under the common law rules, three main categories must be considered: 1) behavioral control, 2) financial control, and 3) relationship of the parties.

Behavioral control—A worker is an employee when the tribe has the right to direct and control the worker. Facts to consider include:

Instruction the tribe gives to the worker, such as:

- How, when, or where to do the work
- What tools or equipment to use
- What assistants to hire to help with the work
- Where to purchase supplies and services
- What work must be performed by a specified individual
- What order or sequence to follow

Training the tribe gives the worker

Financial control—Facts that show whether there is a right to direct or control the business part of the work include:

- Significant investment—the extent of the worker's investment
- Expenses—the extent to which the worker has unreimbursed business expenses
- Opportunity for profit or loss—the extent to which the worker can realize a profit or loss
- The extent to which the worker makes services available to others
- How the business pays the worker

Relationship of the parties—Facts that illustrate how the tribe and worker perceive their relationship include:

- Employee benefits—whether the tribe provides the worker with employee-type benefits

- Written contracts describing the relationship
- The permanency of the relationship
- The extent to which services performed by the worker are a key aspect of the tribal business

Even after evaluating the above factors, there will be times when it is difficult to make the determination as to whether an individual is a common law employee or an independent contractor. Many individuals who have personal service contracts with tribal governments may be employees rather than independent contractors. The mere existence of a contract does not mean the individual is not an employee.

It is important to the worker that the employment status be determined as quickly as possible so that the earnings can be properly reported. To request a determination from the IRS as to whether or not a worker is an employee, file a Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. See Chapter 3, page 17 of Publication 4268, Employment Tax Desk Guide, for further information.

Even though some workers may seem to be independent contractors under the common law rules just discussed, they may be considered statutory employees if they fall into any one of four categories and they meet three additional conditions. The law defines certain workers as employees by statute. These categories include: 1) drivers who distribute certain food products or deliver laundry or dry cleaning, 2) full-time life insurance sales agents, 3) individuals who work at home on materials and goods you supply and must be returned to you, and 4) full-time traveling or city salespersons who turn in orders to you from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments. Refer to Publication 15-A, Section 1, Who are Employees? for further information.

The general rule is that an individual is an independent contractor if you, the tribe for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result. Workers who offer their services to the public are generally not employees. Form 1099-MISC, Miscellaneous Income, should be furnished to independent contractors and filed with IRS.

Misclassification of Employees. If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker (IRC §3509). In some instances, you may have reasonable basis for not treating a worker as an employee and may be entitled to relief under Section 530 of the Revenue Act of 1978.

Examples of Employees

1) The tribal business pays Mr. Tom, an individual, \$500 per week to clean the tribal office complex. Mr. Tom only works for the tribe. He does not have the right to hire or fire any assistants, and he is required to personally do the work. The tribe provides the supplies and tools. Based on these facts, Mr. Tom is considered an employee and the tribe should withhold income taxes and employment taxes. Mr. Tom will be issued a Form W-2.

2) Mr. Bills works as a deputy for the tribal police department. When Mr. Bills is off-duty, he has been repairing the roof of the tribal hospital. The tribe has determined when the work is to be done, has provided the supplies needed, and has determined how Mr. Bills will be paid. Based on these facts, Mr. Bills is considered an employee for the tribe for both jobs and should be issued a Form W-2 showing the withheld income taxes and employment taxes.

3) Ms. Fran is a tribal member but not a council member. Ms. Fran is on the Beautification Committee. She is required to attend the Ms. Indian Pageant Committee meeting and is paid \$50. Ms. Fran is considered an employee and is subject to withholding of federal income taxes, FICA, and Medicare tax. Ms. Fran will also be issued a Form W-2.

Example of an Independent Contractor

The tribe pays Mr. Paul \$600 per week to clean the bingo hall. Mr. Paul operates his own janitorial service that performs work for numerous entities. He has the right to hire and fire his own employees and provides his own supplies. The tribe does not have the right to control Mr. Paul. Therefore, Mr. Paul is not an employee of the tribe and would be issued a Form 1099-MISC.

If you have a question about the treatment of any of your workers, please contact your ITG Specialist

Form W-9 and Backup Withholding

Purpose of Form W-9. A person who is required to file an information return (Form 1099-MISC) with the IRS must obtain the correct taxpayer identification number (TIN) to report, for example, income paid to a vendor, subcontractor, or nonemployee for services or rent.

Use Form W-9 to request a correct TIN and when applicable, to:

Certify that the TIN you received is correct,
Certify that the payee is not subject to backup withholding, or
Certify that the payee is a U.S. exempt payee.

Before making any payments for services and rents, you should request a Form W-9 be completed and signed by all individuals and businesses you make

payments to for services and rents.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments. The following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding:

medical and health care payments,
attorneys' fees; and
payments for services paid by a federal executive agency.

If you do not have a TIN on file, you must backup withhold on corporations for the above type of payments. If you do not have a TIN on file for individuals and partnership, you must backup withhold on any payments.

Backup Withholding. You generally must withhold 28% of payments if the payee fails to furnish you with his or her correct taxpayer identification number (TIN). This withholding is referred to as "backup withholding."

Payments to payees will be subject to backup withholding if the payment exceeds \$600 and you do not have their TIN on file at the time of payment. If you make multiple payments to the same payee, once the cumulative amount for the year exceeds \$600 you must begin backup withholding at 28% for all subsequent payments until you have a certified TIN on file.

Form 945. If you withhold federal income tax (backup withholding) from nonpayroll payments, you must file Form 945. For 2007, file Form 945 by January 31, 2008. However, if you made deposits on time in full payment of the taxes for the year, you may file the return by February 10, 2008. See Publication 15 for further information.

Depositing Withheld Taxes. Deposit all nonpayroll (Form 945) withheld federal income tax, including backup withholding, by using the Electronic Federal Tax Payment System (EFTPS) or by depositing at an authorized institution using Form 8109, Federal Tax Deposit Coupon. Do not combine deposits for Forms 941 with deposits for Form 945. If you deposit using Form 8109, be sure to darken the space for Form "945" on Form 8109.

Generally, the deposit rules that apply to Form 941 also apply to Form 945. However, because Form 945 is an annual return, the rules for determining your deposit schedule are different from those for Form 941. See section 11 of Pub. 15 (Circular E) for a detailed discussion of the deposit rules.

Federal Tax Calendar for Third Quarter 2007

July 2007

Thursday, July 5 – *make a deposit for 6/27-6/29

Monday, July 9 - *make a deposit for 6/30-7/3

Tuesday, July 10 - Employees report June tip income to employers if \$20 or more

Wednesday, July 11 - *make a deposit for 7/4-7/6

Friday, July 13 - *make a deposit for 7/7-7/10

Monday, July 16 - **make a deposit for June if under the monthly deposit rule

Wednesday, July 18 - *make a deposit for 7/11-7/13

Friday, July 20 - *make a deposit for 7/14-7/17

Wednesday, July 25 - *make a deposit for 7/18-7/20

Friday, July 27 - *make a deposit for 7/21-7/24

August 2007

Wednesday, August 1 - *make a deposit for 7/25-7/27

Friday, August 3 - *make a deposit for 7/28-7/31

Wednesday, August 8 - *make a deposit for 8/1-8/3

Friday, August 10 - *make a deposit for 8/4-8/7 – Employees report July tip income if \$20 or more

Wednesday, August 15 - *make a deposit for 8/8-8/10 -- **make a deposit for July if under the monthly deposit rule

Friday, August 17 - *make a deposit for 8/11-8/14

Wednesday, August 22 - *make a deposit for 8/15-8/17

Friday, August 24 - *make a deposit for 8/18-8/21

Wednesday, August 29 - *make a deposit for 8/22-8/24

Friday, August 31 - *make a deposit for 8/25-8/28

September 2007

Thursday, September 6 - *make a deposit for 8/29-8/31

Friday, September 7 - *make a deposit for 9/1-9/4

Monday, September 10 - Employees report August tip income to employers if \$20 or more

Wednesday, September 12 - *make a deposit for 9/5- 9/7

Friday, September 14 - *make a deposit for 9/8-9/11

Monday, September 17 - **make a deposit for August if under the monthly deposit rule

Wednesday, September 19 - *make a deposit for 9/12-9/14

Friday, September 21 - *make a deposit for 9/15-9/18

Wednesday, September 26 - *make a deposit for 9/19-9/21

Friday, September 28 - *make a deposit for 9/22-9/25

Return Filing Dates

July 2nd

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

File Form 11-C 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 2007. If all deposits paid on time and in full, file by August 10th.

File Form 730 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 1st

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

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