



ITG News

Keeping First Nations Informed



Publication 4267G

Catalog Number 37844Q

Western Edition

April 2005

Several major indictments have received substantial press in recent months involving alleged criminal activity that infiltrated tribal entities. One investigation involving the Kickapoo Traditional Tribe of Texas resulted in indictments of 7 individuals for conspiracy, theft of tribal funds, and money laundering. Another case resulted in 17 individuals being indicted for race fixing, and money laundering through tribal off-track betting operations.

While these cases are a grave concern for everyone, the alleged crimes are certainly not unique to tribal governments. Unfortunately criminal activity can arise in all types of governments, as well as in the private sector.

Some key actions that might have mitigated the problems identified in these cases include:

- > Strengthening Internal Controls – ensuring that there are adequate checks and balances in place that monitor the receipt, control, and expenditure of funds.
- > Maintaining Tribal Oversight of Gaming – while casino management firms and consultants can bring needed expertise, Tribes need to ensure that they have full oversight of all gaming activities.
- > Looking for Operating Aberrations – as with all entities, tribal enterprises have budgets that include anticipated revenue and expenses by various categories. There are also industry “norms” that can be used to determine whether the enterprise is operating properly. If someone makes a proposal that sounds too good to be true, it probably is – or – if the performance of an enterprise is not aligned with expectations, an analysis of the cause of such aberrations needs to be performed. This includes situations where the performance is better than expected, as well as where it is worse than anticipated.

The office of Indian Tribal Governments will continue to monitor and address potential abuses, since they not only impact federal tax administration, but also risk tribal revenues that are needed to fund programs and services for members. Although these situations are uncomfortable, we commend the tribes for their cooperation in helping to identify and remedy the problems identified to date. We are committed to partnering with tribal authorities to protect tribal assets for the benefit of tribal members. I encourage all of you to surface any concerns you may have to tege.itg.schemes@irs.gov, or by contacting us at 716-686-4860.



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Christie Jacobs



New ITG Specialists to be Hired

Many tribal representatives who attended our Listening meetings in 2003 expressed concern about the Service's long-term commitment to the office of Indian Tribal Governments. As attrition occurred, or new priorities arose, attendees questioned the ability to maintain the staffing required to assist tribes with federal tax administration and money laundering issues.

We are pleased to announce that the FY 2005 IRS budget will allow the office of Indian Tribal Governments to add 13 new staff positions in our field groups. This will not only fully replace all of our attrition losses since our inception, but actually increase our overall staffing by three positions. We are in the process of completing the hiring process, and expect to have the 13 new Specialists selected and fully trained by late summer.

At present, we hope to add staffing in California, Alaska, the Pacific Northwest, Oklahoma, Minnesota, and the Southwest. Tribes should expect that there will be some realignment of assignments, which means that some tribes will have different Specialists assigned to them once we complete the hiring and training process. We will keep everyone informed of any changes as they occur. Although we realize that there may be some discomfort with change, we are excited that the additional staffing will mean an increase in our ability to meet the federal tax administration needs of Tribal governments, and ensure that ability is maintained for the near future.

Web Site Redesign Planned

Our 2004 Customer Satisfaction Survey indicated a need for us to redesign our web site so that important information could be more readily located. We have been working with our web vendor to accomplish that need, and have asked the tribal representatives on the Advisory Committee to the Tax Exempt Government Entities Commissioner to validate our approach.

We believe the new proposed layout will improve the ability of users to navigate and more quickly locate the information they need. We hope to implement the change by May, and welcome any feedback you may have on further enhancements we might make to improve your ability to access information.

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.

Form 941 Has a New Look

Form 941 (Employer's Quarterly Federal Tax Return) has been redesigned for tax periods beginning after December 31, 2004. The new, two-page Form 941 is easier to understand and follow. The tax information and calculations are basically the same but the line numbers have changed from the previous version.

The Schedule B (Form 941) has also been redesigned. You can access both of these documents and the instructions on the "Forms and Publications" page at www.irs.gov. Copies of the form and instructions are also available by calling the IRS at 1-800-829-3676.



How to Use Form 941's Schedule B

A Schedule B (Form 941) must be filled out and attached to Form 941 if you are a Semiweekly Schedule Depositor or became one because your accumulated tax liability on any day was \$100,000 or more.

Schedule B is used to show your **tax liability** for the quarter. **DO NOT** use the Schedule B to show when you made your federal tax deposits. If you do so, a Federal Tax Deposit (FTD) penalty may be generated.

Write your daily tax liability in the numbered space that corresponds to the date wages are paid. For example, if your payroll period ended on December 31, 2004, and you paid the wages for the period on January 7, 2005, you would:

- Go to Month 1 (because January is the 1st month of the quarter) and
- Write your tax liability on line 7 (because line 7 represents the 7th day of the month).

To find your total liability for the quarter, add your monthly tax liabilities. In order to avoid further FTD penalties, **your total liability for the quarter must equal line 10 on the new 2005 Form 941.**

Please remember that Schedule B is used to report your tax liability ... NOT deposits!



Fuel and Communication Excise Taxes

Fuel Excise Taxes: Fuel used for a tribal government's "**essential governmental function**" is exempt from federal fuel tax in the same manner as state and local governments. This applies to tribal school buses, police automobiles, health clinic vehicles, etc.

Some examples of **non-governmental function** fuel purchases are: fuel purchased for use of individual tribal members, casino shuttle buses, casino security police cars, etc. These are NOT exempt from federal fuel tax.

To purchase diesel fuel that is excise tax free, a certificate of exemption must be filed with the vendor. Diesel fuel can only be purchased tax free from a registered vendor. (A tribal government cannot file fuel tax credits for diesel fuel. There is no provision to claim a fuel tax credit for taxed diesel fuel used by the tribe for essential government functions.)

For essential government functions, gasoline may be purchased tax free with a certificate of exemption, only from a wholesale gasoline distributor. If gasoline is purchased tax-paid for essential government functions, a claim can be filed using Form 8849's Schedule 1, following the instructions for State & Local Governments (annual claims can be filed). The Form 8849 can be filed quarterly when the amount claimed reaches at least \$750 or in the 4th quarter of the tribe's fiscal year. The claim should be noted as a 4th quarter claim at the top of the form if filed in the 4th quarter. When you file the Form 8849, be sure you meet the recordkeeping requirements.

There is **NO exemption** that would allow an Indian Tribal Government to purchase fuel tax-free for **RESALE** to consumers. Therefore, gasoline wholesale distributors and diesel fuel ultimate vendors may not sell fuel tax-free to the tribal government for RESALE to consumers, or claim a credit or payment equal to the tax previously paid (Revenue Ruling 94-81).

Communication Excise Tax: This is the excise tax (3%) charged on telephone bills or on leased telephone systems for all the following communication services: Local telephone service; Toll telephone service; and Teletypewriter exchange service.

Essential governmental function uses are exempt from federal communication excise tax. The tribe can contact their communication provider to stop this tax from being asserted by signing an exemption form. If this tax is being charged, a certificate of exemption should be filed with the provider of the telephone service or system requesting a refund for any communication tax collected during the year. If a tribe prefers, they can file a Form 8849 Schedule 6 to claim a refund quarterly.

Caution: Do not combine Schedule 1 and Schedule 6 on one Form 8849. You will need to prepare a Form 8849 with Schedule 1 for Fuel Excise Tax claims and a separate Form 8849 with Schedule 6 for Communication Excise Tax claims. Reference: Revenue Ruling 94-81 and Publication 510, Excise Taxes.



Per Capita Payments

What are per capita payments? Per capita payments are made or distributed by a tribe to all members of a tribe or to identified groups of members. Per capita payments do not include payments authorized by a tribe for special purposes or programs, such as social welfare, medical assistance, or education.

The type of per capita payment will determine the tax and withholding requirements. (This article will not cover payments from revenue derived from fishing rights or allotted land.)

There are **three primary types of per capita distributions:**

1. Per capita payments received from **non-gaming revenue sources**, such as manufacturing, retail sales, and tribal businesses other than a Class II or Class III operations are subject to individual income taxes but not to federal withholding. Withholding of tax from non-gaming revenue sources can be made on a **voluntary** basis, however, and is highly encouraged.
2. Per capita payments received from **California Revenue Sharing Trust Funds** are also subject to individual income taxes but not to federal withholding. Withholding of tax from Revenue Sharing Distributions can be made on a **voluntary** basis, however, and is highly encouraged.
3. Per capita payments received from **gaming profits** (Class II and Class III gaming activities) are subject to individual income taxes and have **mandatory federal withholding** requirements.

Withholding rates for per capita payments from gaming profits are contained in Publication 15-A. As noted above, only payments made from Class II and Class III gaming profits are subject to federal withholding. In Publication 15-A there are 8 different tables that show the amount of tax to withhold each time a payment is made, depending on the amount and timeframe between payments.

The Indian Gaming Revenue Act (IGRA) governs Indian gaming. Within IGRA are specifications for per capita payments. In brief (1) The tribe must have a plan, (2) The plan must be approved by the Secretary of the Interior, (3) The interests of minors and other legally incompetent persons must be protected and (4) Payments are subject to federal taxation and the tribe must notify members of such tax liability when the payments are made.

The authority for **mandatory withholding** is derived from the Internal Revenue Code. **Internal Revenue Code Section 3402 (r) (1)** states, "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."

Two things to remember, unless the payment is specifically excluded by the Internal Revenue Code, it is generally taxable and withholding is required on payments received from gaming revenue.



New Tip Program Coordinator

In order to better serve our customers, the Office of Indian Tribal Governments has created a new position of Tip Program Coordinator to work directly with tribal entities that have entered into a Tip Rate Determination Agreement (**TRDA**) or Gaming Industry Tip Compliance Agreement (**GITCA**) with the Internal Revenue Service.

The new Tip Program Coordinator's responsibilities include monitoring the requirements that must be met as specified within the TRDA and GITCA, e.g. the Annual Report of Employees which is due each March 31st for the preceding calendar year.

Kimberly Malone was selected as the new Tip Program Coordinator. She can be reached at Kimberly.Malone@irs.gov or by telephone at **(303) 231-5250, extension 237**. Your regularly assigned Indian Tribal Government Specialist is still your primary contact for any TRDA or GITCA issues or questions. If, however, something specific arises concerning the required TRDA or GITCA submissions, please contact Kimberly Malone for those purposes.

ITG Contact Information

<u>NAME</u>	<u>PHONE</u>	<u>FAX</u>
Gil Akers 850 Industrial Street, Suite 300 Redding, CA 96002	(530) 722-1263	(530) 722-1285
Vincent Garcia Mitchell Underwood 290 North D Street San Bernardino, CA 92401	(909) 388-8106 (909) 388-8385	(909) 388-8360 (909) 388-8360
Scott Karafin James Rivers Emily Williamson 701 B Street, Suite 902 San Diego, CA 92101-8143	(619) 230-8165 ext. 130 (619) 230-8165 ext. 120 (619) 230-8165 ext. 126	(619) 557-7050 (619) 557-7050 (619) 557-7050
Julie North 4330 Watt Avenue SA; 5214, ITG 7283 Sacramento, CA 95821	(916) 974-5578	(916) 974-5159
John Saltmarsh, Manager 290 North D Street San Bernardino, CA 92401	(909) 388-8165	(909) 388-8203

Federal Tax Calendar for Second Quarter 2005

April 2005

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

May 2005

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Deposit FUTA taxes due through March if greater than \$100 and subject to FUTA	3	4 * Make a deposit for 4/27-4/29	5	6 * Make a deposit for 4/30-5/3	7
8	9	10 Employees report April tip income to employers if \$20 or more	11 * Make a deposit for 5/4-5/6	12	13 * Make a deposit for 5/7-5/10	14
15	16 ** Make a deposit for April if under the monthly deposit rule	17	18 * Make a deposit for 5/11-5/13	19	20 * Make a deposit for 5/14-5/17	21
22	23	24	25 * Make a deposit for 5/18-5/20	26	27 * Make a deposit for 5/21-5/24	28
29	30	31				

*= 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.

June 2005

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

*= 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

May 2nd

- > File Form 941 for the 1st quarter of 2005. If all deposits paid on time and in full, file by May 10th.
- > File Form 730 and pay the tax on applicable wagers accepted during March.

May 31st

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

June 30th

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

Reminder: Form 11-C for the Occupational Excise tax is due on July 1st