



# ITG News

Keeping First Nations Informed



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July 2004

## Message From The Director

As the office of Indian Tribal Governments moves into its fifth year of existence, I want to reiterate my commitment to maintaining open communications with our customer base, America's First Nations. While tax issues are often complex and sometimes contentious, we are committed to ensuring that we do everything possible to assist in resolving federal tax concerns.

We continue to seek opportunities to dialogue with tribes and tribal associations. We have found these opportunities to be invaluable, not only for the ability it provides us to share current tax information, but also for the opportunity to listen to questions and concerns on the part of tribes. We welcome all invitations to meet with individual tribes, regional tribal groups, tribal tax associations, and tribal leadership councils.

We have continued to enhance our web site by adding new products, such as Publication 4268 – an Employment Tax Guide for Tribes, to existing products such as our Frequently Asked Questions and Publication 3908 - the gaming tax guide. Because many tribes have told us that they have minimal Internet access, we have also created and distributed publications, along with common tax forms, via a CD-Rom. If you would like a copy of the CD-Rom, please feel free to contact your ITG Specialist.

As many of you may be aware, several years ago the Tax Exempt Government Entities Division formed an outside stakeholder group to assist in identifying areas where the Service needed to undertake improvements to better meet customer needs. The Advisory Committee to the TEGE Commissioner (ACT) has 20 total members who each serve a multi-year term. I am pleased to announce that Robert Gips and Lenor Scheffler were recently appointed to fill vacancies on the ACT and will be representing tribal interests. Both have extensive experience with tribal issues, and we look forward to their invaluable contributions.

Finally, I want to ensure that all of you feel free to contact me at any time with any concerns you may have that cannot be resolved by our field staff. I can be contacted at (202) 283-9800 or via e-mail at [christie.jacobs@irs.gov](mailto:christie.jacobs@irs.gov).

Christie Jacobs



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# Federal Tax Calendar for Third Quarter 2004

## July 2004

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

## August 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4 * Payroll date 7/28-7/30	5	6 * Payroll date 7/31-8/3	7
8	9	10 Employees report tips from July	11 * Payroll date 8/4-8/6	12	13 * Payroll date 8/7-8/10	14
15	16 ** Monthly Deposit for July	17	18 * Payroll date 8/11-8/13	19	20 * Payroll date 8/14-8/17	21
22	23	24	25 * Payroll date 8/18-8/20	26	27 * Payroll date 8/21-8/24	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.

# September 2004

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

July 1st

File Form 11-C to register and pay the annual Occupational tax if you are in the business of taking wagers

August 2nd

File Form 941 for the quarter ended June 30, 2004. If the tax was deposited in full and on time, 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

September 30th

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

## Section 501(c)(4) Entities and FUTA

Although the Consolidated Appropriations Act of 2000 allowed tribes the opportunity to be exempted from Federal Unemployment Tax, that provision did not automatically extend to entities that a tribe structured under Section 501(c)(4) of the Internal Revenue Code. As a result, advice was requested to clarify FUTA requirements for these entities, which can best be summarized through the following Questions and Answers:

Question: A Tribal government is a federally recognized tribe with its own EIN. They have a separate entity with a different EIN and an exemption under 501(c)(4). One or more of the tribal council members sit on the board, but the exempt organization makes its own decisions. The tribal government does not control it. Is the entity subject to FUTA?

Answer: Yes. The entity must file Form 940 and pay FUTA. The facts suggest this entity is wholly independent from the tribe. Although the tribal council may have some representation on the entity's board, the entity is structured so to be able to operate wholly independent of the tribe.

Question: If a Tribal government has only one entity for the tribe and has structured it under Section 501(c)(4), and the tribal council controls the exempt organization, is the entity liable for paying FUTA and filing Form 940?

Answer: No. The entity has no liability for FUTA. The facts suggest the entity could be seen as either operated directly by the tribe or wholly owned by the tribe.

Question: A Tribal government is a federally recognized tribe with its own EIN. They have a separate entity with a different EIN that is exempt from income tax under Section 501(c)(4). The board's members consist of the entire tribal council, and they control the entity. Is the 501(c)(4) entity subject to FUTA?

Answer: No. The entity has no liability for FUTA. Although there are two separate EINs, the facts suggest the entity is either operated directly by the tribe or wholly owned by the tribe, since the entire tribal council constitutes the Board of the entity.

In summary, a 501(c)(4) entity that is 100% controlled by the tribe and has no autonomy, yet does not exercise government authority on its own, will probably qualify for relief from FUTA. Other 501(c)(4) entities will normally be subject to FUTA.

## Consultation Policy Update

We continue to progress in the development of an IRS/Tribal Consultation Policy, following the outline provided by the Advisory Committee on Tax Exempt and Government Entities (ACT). The Office of Indian Tribal Governments held a series of 12 regional meetings and met with tribal representatives to listen to their input on the development of an IRS/Tribal Consultation Policy. A summary was compiled and posted to the ITG web site, and interested parties were offered an opportunity to comment on the input before April 30, 2004.

A joint IRS/Tribal group has now begun the process of developing an initial Consultation Policy draft, with further opportunities to review and comment as we proceed. We expect to have the initial draft posted to our web site by the fall of 2004.

We would like to thank everyone who has participated in the process to date, and we look forward to the continuing evolution of a Consultation Policy that will best meet the needs of all parties.

## **Annual Reporting Requirements under TRDA and GITCA**

Many tribes have entered into Tip Reporting agreements such as the Tip Rate Determination Agreement (TRDA) and the Gaming Industry Tip Compliance Agreement (GITCA). While these agreements assist both the tribe and the IRS in improving compliance, both also contain an annual reporting mechanism to assist in addressing noncompliance by non-participating employees. Section II(b) of the TRDA, and section 5(f) of the GITCA outline these requirements.

Many tribes have inquired about the process to be used to meet the reporting obligation. In order to assist, we will be contacting each entity with an existing agreement in order to determine the reporting process that will work best for both parties. In the interim, any questions concerning the annual reporting process can be directed to Julie Reese at (303) 231-5250, ext. 236.

## **Private Letter Ruling Clarifies Reporting Requirements for Pow-Wow Prizes**

IRS Counsel has issued Private Letter Ruling (PLR) 200420028 in response to questions regarding the taxability of pow-wow prizes. While the PLR was issued in response to a specific tribe's question, this information is an indication of the position the IRS would take in similar cases.

The question presented was whether the tribe is required to issue a Form 1099 to a pow-wow contest winner who receives \$600 or more as a cash prize. The tribe requesting the PLR raised three arguments 1) they are not subject to tax and by extension not subject to information reporting, 2) they are not a "person" under the meaning of Section 7701, and 3) a pow-wow is not a trade or business for the tribe thus further exempting them from reporting the prizes.

The PLR indicated that Form 1099 was required and provided the following responses to each of the three positions raised by the tribe:

1. Although federally recognized tribes are not subject to income tax, they are subject to employment taxes and information reporting requirements in the same manner as all other governmental entities. Thus, the "not subject to tax" position was not applicable as there is no nexus to information reporting requirements.
2. In *Chickasaw Nation v. United States*, 208 F.3d 871, 879 (10th Cir. 2000), the court concluded that an Indian tribe is a "person" within the meaning of section 7701(a)(1). It explained that "Congress unambiguously intended for the word 'person,' as used in section 7701(a)(1), to encompass all legal entities, including Indian tribes and tribal organizations, that are the subject of rights and duties." In Revenue Ruling 85-194, 1985-2 C.B. 301, the Service ruled that section 6041 applies to an Indian tribe.
3. The regulations state that "all persons engaged in a trade or business" includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. As a result, the information reporting requirements of section 6041 are not limited to organizations that are engaged in activities for gain or profit.

Thus, the PLR ruled that Forms 1099 are required to be issued for pow-wow prizes of \$600 or more.

To add your name or e-mail address to our mailing list, please contact us via e-mail at [Carol.A.Czolowski@irs.gov](mailto:Carol.A.Czolowski@irs.gov), or call Carol Czolowski at (801) 620-5048

## **An Incentive to Join EFTPS**

The Internal Revenue Service has announced an incentive to encourage enrollment in and use of the Electronic Federal Tax Payment System (EFTPS). Approximately 1 million employers could qualify for a refund of a previously paid federal tax deposit (FTD) penalty.

The EFTPS-FTD penalty refund offer allows business taxpayers an opportunity to receive an automatic one-time penalty refund if they have been assessed a deposit penalty on a Form 941, Employer's Quarterly Federal Tax Return. The offer is available to employers who are not mandated to use EFTPS. To qualify for the offer, the employer must:

- use EFTPS for one year (four consecutive quarters),
- make all Form 941 payments on time and,
- have previously fully paid the penalty.

Using the electronic payment system is much more accurate and much less burdensome for taxpayers. At the same time, the government saves money because there are fewer errors, fewer notices and fewer problems.

Using EFTPS eliminates the vast majority of the errors found on paper submissions. These errors on paper coupons result in late or misapplied payments and an FTD penalty. Paying taxes using EFTPS means almost 20 times greater accuracy. Greater accuracy means fewer penalties. Beginning in 2005, the IRS will automatically determine which employers have achieved the four quarters of EFTPS compliance and reverse the most recent full-paid FTD penalty minus any outstanding taxes. No other action by the employer is necessary.

The IRS will look back up to four quarters prior to the four-quarter compliance period for a full paid FTD penalty to abate. Penalties paid earlier than one year prior to the four-quarter compliance period are not eligible for the automatic offer.

EFTPS is a free service provided by two bureaus of the U.S. Department of the Treasury, IRS and the Financial Management Service (FMS). EFTPS gives employers the ability to make federal tax payments electronically online, by phone or with batch provider software for professionals.

Employers can enroll in EFTPS by visiting [EFTPS.gov](http://EFTPS.gov) or by calling EFTPS Customer Service at 1-800-555-4477 to receive an enrollment form by mail.

EFTPS was introduced in 1996 and since that time more than 4.6 million employers have enrolled in the system to make their federal tax payments electronically. In fiscal year 2003, EFTPS processed more than 68.5 million transactions totaling more than \$1.5 trillion. Employers can make payments through a secure web site or by phone 24 hours a day, seven days a week from home or office; schedule payments up to 120 days in advance (for businesses) and 365 days in advance (for individuals); and review the last 16 months of tax payment history online or by calling Customer Service. In addition, taxpayers receive an immediate acknowledgement number for every EFTPS transaction for easy record keeping and as proof of the transaction.

#### Web Links:

- Electronic Federal Tax Payment System -- <http://www.eftps.gov>
- Financial Management Service -- <http://fms.treas.gov>

If you are not already enrolled and need assistance, please contact your ITG Specialist.

**Please see the Frequently Asked Questions about the Penalty Refund Program on the following pages.**

## EFTPS-FTD Penalty Refund Project

### FREQUENTLY ASKED QUESTIONS ABOUT THE PENALTY REFUND PROGRAM

**Q. Why should I use EFTPS?**

A. It's fast, easy, accurate, and secure. There are verification steps along the way that eliminate 90% of paper coupon errors. It is available 24 hours a day, 7 days a week, even when you're away from home. Plus, you receive an EFT Acknowledgement Number, and you can review all electronic payments made within the last 16 months.

**Q. Does the IRS have access to my checking account?**

A. No. The IRS does not have access to the account when the employer initiates tax payments through EFTPS. The Financial Management Service, a separate division of the Department of Treasury, operates EFTPS. What is sent to IRS is confirmation that the payment has been made, so that the credit can be posted to your account.

**Q. Do I have to start using EFTPS at the beginning of the calendar year in order to qualify for the refund?**

A. No, the first quarter counted toward your 4-quarters EFTPS use does not have to be at the beginning of the calendar year. If you do not enroll in time to use EFTPS for that quarter, you can start your 4-quarters EFTPS use at the beginning of any later quarter.

**Q. I'm in a seasonal business, and, in some quarters, I don't have any employees. Will these quarters still count for EFTPS use?**

A. Seasonal employers must use EFTPS for four quarters too, but those four quarters may be spread out over more than 12 months.

**Q. Do I have to pay the penalty that was assessed?**

A. Yes, but if you qualify for the refund, we'll refund the money with interest. The penalty won't be refunded if you do not pay the penalty in full.

**Q. Which penalty will be refunded?**

A. The most recent penalty incurred prior to the start of your 4-quarter compliance period will be refunded. The computer will look back up to 4 quarters to find a full-paid FTD penalty.

**Q. If I receive a penalty refund and stop using EFTPS, can I qualify a second time?**

A. No. This is a one-time offer.

Continued on page 8

**???Questions???**

Contact your ITG Specialist or our toll-free call site at 877-829-5500

**FREQUENTLY ASKED QUESTIONS ABOUT THE PENALTY REFUND PROGRAM Continued**

Q. If I stop using EFTPS before the 4-quarters compliance period ends, can I start over?

A. Yes. You can start your new 4-quarters compliance period at the beginning of the next quarter.

Q. How long do I have to claim the refund?

A. The IRS computer will look back up to 4 quarters prior to your 4-quarter compliance period for a fully paid FTD penalty to refund. So you will want to enroll and use EFTPS for four quarters before your most recent penalty is too far in the past to be refunded. The IRS computer will automatically refund the penalty if you qualify. For example, if you use EFTPS for all four quarters in 2004, the computer will look back as far as the quarter beginning January 1, 2003, for a full paid FTD penalty.

Q. How will I get my penalty refund?

A. IRS will issue a check. Every quarter, beginning in early 2005, the IRS computer will look for accounts that have met the qualifications and automatically refund the most recent penalty incurred prior to the start of your 4-quarter EFTPS compliance period.

Q. How long will it take to receive the refund?

A. The first refunds are scheduled for late April of 2005 after IRS has finished processing the Form 941 returns for the 4th quarter of 2004. However, if you have outstanding tax liabilities, the refund will first be applied to those liabilities and the excess, if any, will be refunded.

Q. Some quarters I send IRS a check with my return, will I still qualify for the penalty refund?

A. No. To qualify for a refund, you must use EFTPS to pay all Form 941 taxes for all four quarters. This includes any payments that are due with the return.


Q. If I'm already signed-up for and using EFTPS for all my Form 941 payments, will I qualify for the refund if I was assessed an FTD penalty before I started using EFTPS?

A. Yes. Employers who began using EFTPS prior to the opening of the offer won't be disqualified. When the first batch of refunds is issued in 2005, the IRS computer will look for quarters of EFTPS use. Each consecutive "extra" quarter (up to four) will extend the refund look-back period by a quarter - provided the statute of limitations for issuing the refund is not expired.

Q. I am required to use EFTPS. Will I qualify for a refund?

A. No. The offer is open to voluntary EFTPS users. However, if you begin your quarters of EFTPS compliance before you are required to use EFTPS you will not be disqualified.





Would you like a copy of a previously issued newsletter? If so, please contact

Carol.A.Czolowski@irs.gov  
or call 801-620-5048

Prior topics include:

Patriot Act Communication System

Treatment and Reporting of Certain Payments to Tribal Council Members and Election Workers

Annual Wage Reporting

Social Security E-file

Federal Unemployment Tax

Pay Federal Taxes Electronically

Reporting Tribal Distributions

Tax Schemes in Indian Country

Suspicious Activity Reporting and Casinos

Form 1099-Misc

The Basics of Federal Tax Deposits

Tip Reporting Agreements—  
Minimizing Financial Risk

Gaming Industry Tip Compliance  
Agreement Program

Tribal Enterprise Structure Issues

IRS/Tribal Consultation Policy

## Indian Tribal Governments and Deductible Contributions

Many foundations and other donors are not aware that Indian tribal governments are eligible to receive tax deductible contributions.

Under Section 7871 of the Internal Revenue Code, Congress determined that federally recognized Indian tribes and their subdivisions would be treated like states for certain specified purposes, because tribal governments, like state governments, serve the public within their jurisdictional boundaries, and accordingly should be permitted to devote their limited resources to that end.

Internal Revenue Service Publication 78, Cumulative List of Organizations, has been revised and now explains the rules for deducting contributions to tribes. This publication lists the names of organizations eligible to receive tax deductible contributions, as well as the limitations on deductibility. Donors rely heavily on Publication 78 in determining whether an entity is eligible to receive a deductible contribution or grant.

Although the publication has always explained the rules for donating to state governments and listed tribal entities that had 501(c)(3) status, the rules for donating to a tribal government were not mentioned.

More information can be found by visiting ITG FAQs at [www.irs.gov/tribes](http://www.irs.gov/tribes). A list of pertinent questions and answers can be found by clicking on FAQs regarding Employee Plans and Exempt Organizations.

## Tribal Employment Tax Guide Now Available

Publication 4268, our on-line Employment Tax Guide for Tribal Governments, is now available at our web site at [www.irs.gov/tribes](http://www.irs.gov/tribes).

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- **Call: Customer Account Services** toll free **877-829-5500**
- **Visit: Indian Tribal Governments** Web site at **[www.irs.gov/tribes](http://www.irs.gov/tribes)**
- **Write: Internal Revenue Service**

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