

INTERNAL REVENUE SERVICE  
TAX EXEMPT AND GOVERNMENT ENTITIES  
Indian Tribal Governments

# Gaming Tax Law and Bank Secrecy Act Issues

FOR INDIAN  
TRIBAL GOVERNMENTS



As an employer, what Federal tax responsibilities associated with tribal gaming do I need to know for my employees and my customers?

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# Gaming Tax Law and Bank Secrecy Act Issues

FOR INDIAN TRIBAL GOVERNMENTS



All tribal governments conducting or sponsoring gaming activities, whether for one night out of the year or throughout the year, whether in their primary place of operation or at remote sites, must be aware of the federal requirements associated with income tax reporting, employment tax, and excise tax.

The Indian Gaming Regulatory Act divides gaming activities into three classes:

- Class I consists of social games that have prizes of minimal value and traditional tribal games played in connection with tribal ceremonies or celebrations.
- Class II primarily includes bingo (whether or not it is electronically enhanced), pull-tabs, lotto, punch boards, tip jars, instant bingo, games similar to bingo, and non-banking card games allowed by state law.
- Class III gaming includes all gaming that is not Class I or Class II gaming, which primarily includes slot machines, casino games, banking card games, dog racing, horse racing, and lotteries.

This Internal Revenue Service (IRS) publication provides you with the latest tax law applicable to gaming operations for these gaming activities. Specifically, you will learn about recordkeeping, employment tax, tax on wagering, per capita distributions, forms to file, and much more. All IRS forms and publications referenced throughout this publication can be downloaded or ordered online at the IRS web site [www.irs.gov](http://www.irs.gov).

Visit the office of Indian Tribal Governments Web site at [www.irs.gov/tribes](http://www.irs.gov/tribes).

For further information on gaming tax law, contact the Indian Tribal Governments Specialist assigned to your tribe by going to the web at [www.irs.gov/pub/irs-tege/itg\\_specialists.pdf](http://www.irs.gov/pub/irs-tege/itg_specialists.pdf), or contact the Indian Tribal Governments Field Group Manager in your area (listing on back cover). For Customer Account Services call (877) 829-5500.

## Indian Gaming Regulatory Act (IGRA)

In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) to:

1. provide a statutory basis for the operation of gaming by Indian tribes to promote tribal economic development, self-sufficiency, and strong tribal governments;
2. provide a statutory basis for the regulation of Indian gaming to ensure tribes are the primary beneficiaries;
3. establish:
  - a) independent federal regulatory authority for Indian gaming,
  - b) federal standards for Indian gaming, and
  - c) the National Indian Gaming Commission (NIGC), to meet congressional concerns regarding Indian gaming and protect such gaming as a means of generating tribal revenue;
4. shield gaming from organized crime and other corrupting influences; and
5. ensure that gaming is conducted fairly and honestly by both the operators and the players.

Since IGRA's passage in 1988, tribes and states have successfully negotiated hundreds of Tribal-State gaming compacts. Gaming provides significant revenues for many Indian tribes.

## Determining Federal Tax Status of Indian Tribal Governments

While the National Indian Gaming Commission (NIGC), established under the IGRA, has oversight responsibility for Indian gaming, the IRS has responsibility for federal taxation issues emanating from gaming, as well as any other federal tax issues involving Indian tribal governments. As a result of gaming compacts negotiated between the tribes and states, other types of regulations may have been created that involve state oversight. However, the IRS is charged with interpreting federal tax law as it relates to tribal entities and enterprises.

Even though Indian tribes are not subject to federal income tax, an individual tribal member not exempt from income taxation must report gross income amounts distributed or constructively received.

In tribal gaming, structure and ownership of a gaming operation has a significant impact on the taxability of the income, as explained in the examples below.

**Example 1:** A tribe may operate unincorporated businesses in or away from Indian country. The income derived is not subject to federal income tax. If the tribe decides to incorporate its business, it may subject the income to tax based on how the corporation is formed.

**Example 2:** A tribe may incorporate under the Indian Reorganization Act of 1934. This type of corporation is not subject to income tax regardless of where the business is located. An approval article or certificate signed by the Secretary of the Interior is evidence of incorporation under the Indian Reorganization Act.

**Example 3:** An Indian tribe located in Oklahoma is not eligible to incorporate under the Indian Reorganization Act. Instead, an Oklahoma tribe may incorporate under the Oklahoma Indian Welfare Act. This type of corporation is not subject to income tax regardless of where the business is located. An approval article or certification signed by the Secretary of the Interior is evidence of incorporation under the Oklahoma Indian Welfare Act.

**Example 4:** An Indian tribe may also form a corporation under state law. This type of corporation is ordinarily subject to federal income tax on income earned on or after October 1, 1994, regardless of where the business is located. Because the state charter creates an entity separate and distinct from the tribe, the federal income tax applies to this new entity. A Certification of Incorporation issued by the state is evidence of incorporation under state law.

## Recordkeeping and Reporting (Gaming Income, Payouts, Expenses)

**Class I, Class II, and Class III Gaming Operations** – Tribal governments that are conducting gaming operations deal with large numbers of individuals and massive amounts of currency. Therefore, tribal gaming operations should be actively involved in overseeing and controlling each facet of the gaming activity to ensure funds are not diverted to private individuals or for private purposes. The IGRA provides the framework to handle necessary recordkeeping when a tribe is involved in either Class II or Class III gaming. Class I gaming on Indian land is within the exclusive jurisdiction of Indian tribes and is not subject to IGRA provisions.

### Regulations

Whether a tribe has hired a management company to run its gaming operation, or it is handling the gaming operation itself, the tribe must follow the regulations issued by the NIGC that cover the Minimum Internal Control Standards (MICS) for Indian gaming. These standards are applicable if they are more stringent than the standards included in a Tribal-State compact. However, if the Tribal-State compact is more stringent, then the compact standards apply.

The NIGC regulations cover the internal controls needed for all Class II and Class III gaming operations. (Generally, gaming operations existing as of March 31, 1999, were allowed until February 4, 2000, to comply with the minimum standards, with the potential for a six-month extension. Gaming operations commencing after March 31, 1999, are required to be in compliance at the time operations commence.) A tribe must also have an independent certified public accountant (CPA) verify that the Internal Control Systems, that are in place, are in compliance with the Minimum Internal Control Standards of the NIGC's regulation, or with the Tribal-State compact. Failure to meet these standards may result in temporary closure and/or civil fines.

The NIGC regulations can be obtained from the NIGC.

## Recordkeeping

Remember that whether a tribe has hired a management company to run the gaming operation, or it is running the operation itself, the tribe, as owner, is required to ensure the maintenance of all books and records used to determine gross and net income, and to determine information reporting responsibilities such as IRS Form W-2G, *Certain Gambling Winnings*.

**Example 1:** A tribal gaming operation sells pull-tabs during its bingo session. The box of pull-tabs contains 2,400 tickets that sell for \$1 each. The gross receipts for that box of pull-tabs is \$2,400, and the records of the gaming operation must reflect that amount.

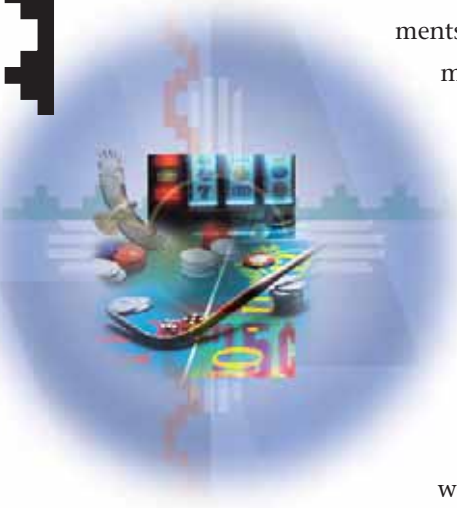
**Example 2:** If a player cashes in a \$1 winning ticket for another ticket, \$1 must be included in gross receipts of the tribe. The player actually cashed in his ticket for \$1 in cash, then purchased the second ticket for \$1. For simplicity sake, the cash payment and purchase of the second ticket was combined. Therefore, \$1 is included in gross receipts and \$1 is included in prizes awarded.

The NIGC regulations require that the books and records of a tribal Class II or Class III operation be retained for at least five years. Regulations require that records be retained as long as the contents may be material in the administration of tax law. This usually means as long as the period of limitation has not expired on the applicable tax year for income tax (generally three years from the later of the date filed or the due date of the return). In addition, employment tax regulations specify that records must be preserved for at least four years after the due date of employment tax returns, or four years from the date the tax was paid, whichever is later.

Tribal-State compacts may contain additional recordkeeping and reporting requirements for tribal gaming operations. Also, there are special recordkeeping requirements for excise tax application. See section *Tax on Wagering (Application of Excise Tax)*, page 14.

### **Bank Secrecy Act (BSA), Title 31 of the Code of Federal Regulations**

– In 1970, Congress enacted the Bank Secrecy Act. This far-reaching Act authorizes the issuance of rules and regulations for the reporting of currency transactions of greater than \$10,000, and rules and regulations that impose certain identification and recordkeeping requirements. The Bank Secrecy Act was designed to create an audit trail to help minimize illicit financial transactions. The Bank Secrecy Act regulations were amended in 1985 to cover casinos with gross annual gaming revenue in excess of \$1,000,000. This coverage was extended to Indian casino operations in August 1996 and card clubs in August 1998. Casinos are cash intensive businesses, which can offer a broad array of financial services, such as deposit or credit accounts, facilities for transmit-





ting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those provided by depository institutions and other financial firms. As such, casinos are vulnerable to abuse by money launderers and tax evaders.

**Casino Definition**

Casinos and card clubs are designated as financial institutions subject to the requirements of the Bank Secrecy Act if they are licensed or authorized to do business as casinos or card clubs in the United States by state, local, or tribal governments; and if they have gross annual gaming revenues in excess of \$1,000,000. See 31 C.F.R. §§ 103.11(n)(5)(i) and (n)(6)(i).



**Anti-Money Laundering Compliance Programs**

Section 352 of the USA PATRIOT Act of 2001 requires financial institutions to establish anti-money laundering programs. See 31 U.S.C. § 5318(h). A casino or card club complies with this requirement if the casino or card club implements and maintains an adequate program for compliance with the Bank Secrecy Act. See 31 C.F.R. § 103.120(d). Specific compliance program requirements are found in 31 C.F.R. § 103.64(a). Casinos and card clubs are required to develop and implement a reasonably designed, written program to assure and monitor compliance with the Bank Secrecy Act. At a minimum the program must include:

- a system of internal controls to assure ongoing compliance;
- internal and/or external independent testing for compliance with a scope and frequency commensurate with the risks of money laundering and terrorist financing, and the products and services provided;
- training of personnel in Bank Secrecy Act requirements;
- designation of an individual or individuals to assure day-to-day compliance;
- procedures for using all available information to determine and verify, when required, the name, address, social security or taxpayer identification number, and other identifying information for a person;
- procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious; and
- For casinos and card clubs with automated data processing systems, use of the programs to aid in assuring compliance.

**Suspicious Transactions**

A casino or card club is required to file a suspicious activity report when it knows, suspects or has reason to suspect that a transaction or pattern of transactions is both suspicious and involves or



aggregates to \$5,000 or more in funds or other assets. A transaction (conducted or attempted) is “suspicious” if the transaction:

- involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity, or to disguise the ownership, nature, source, location, or control of the funds;
- is designed to evade Bank Secrecy Act requirements, whether through structuring or other means;
- has no business or apparent lawful purpose, or is not the sort in which the particular customer would normally be expected to engage, and the casino or card club knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
- involves the use of the casino or card club to facilitate criminal activity.

See 31 C.F.R. § 103.21.

Financial Crimes Enforcement Network (FinCEN) Form 102, Suspicious Activity Report by Casinos and Card Clubs (SARC), is used to report suspicious activity. A casino or card club must file this form within 30 calendar days after initial detection of the suspicious transaction. If no suspect is identified on the date of detection, a casino or card club may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. However, a casino or card club must in all events report a suspicious transaction within 60 calendar days after the date of initial detection. The following are representative examples of how, under particular facts and circumstances, an activity may appear suspicious.

**Example 1:** Customers seek to cash out chips, tokens or a ticket in excess of \$10,000, but when asked for identification for completing a Currency Transaction Report by Casinos (CTRC), reduce the amount of chips or tokens to be cashed out to less than \$10,000.

**Example 2:** Customers may purchase large amounts of chips with currency at table games, engage in minimal gaming, and then redeem the chips for casino checks.

**Example 3:** Customers furnish identification documents that are false or altered (e.g., address changed, photograph substituted, etc.).

**Example 4:** A customer requests the issuance of multiple casino checks that are made out to third parties or checks without a specified payee.

**Example 5:** A casino suspects that customers are involved in a credit card or check cashing fraud.

Additional information regarding suspicious activity reporting requirements including FinCEN’s *Suspicious Activity Reporting Guidance for Casinos* (which explains how to prepare a complete and sufficient “Narrative” and provides additional illustrative examples), as well as FinCEN Form 102 (SARC), can be obtained through the Financial Crimes Enforcement Network’s Web site at [www.fincen.gov](http://www.fincen.gov).



## Currency Transaction Reporting

A casino or card club must file a report of each currency transaction involving cash-in or cash-out of more than \$10,000 conducted by, through, or to the casino or card club. A casino or card club must aggregate multiple currency transactions – treat the transactions as a single transaction – if the transactions result in cash-in or cash-out of more than \$10,000 during a single gaming day<sup>1</sup> and the casino or card club has knowledge that the transactions are conducted by, or on behalf of, the same person. It is not necessary to have personally observed the multiple transactions; knowledge can be acquired also from examining the books, records, logs, computer files, etc., that contain information that the reportable currency transactions have occurred. See 31 C.F.R. §§ 103.22(b)(2) and (c)(3).

**Example:** While reviewing a customer's account status on a computer in the gaming pit, a floor person notices that a customer has already purchased \$9,000 of chips in cash at another pit. Later, the customer asks to purchase from the dealer an additional \$5,000 in chips with cash that is approved by the floorperson. The casino is required to file a CTRC because a casino employee had knowledge that the customer had cash-in transactions in excess of \$10,000 in one gaming day.

In order to properly file a FinCEN Form 103, *Currency Transaction Report by Casinos (CTRC)*, the casino or card club is required to secure certain information from the customer (including foreign nationals) BEFORE concluding the transaction unless the transaction is identified through an “after the fact aggregation” process.<sup>2</sup> “After the fact aggregation” of currency transactions does not relieve a casino or card club of the requirement to file a FinCEN Form 103 that contains all information called for when it has the ability to obtain the information through examination of internal records or systems. See FinCEN Form 103 for instructions on how to complete the form. See 31 C.F.R. § 103.28 for the requirement to identify persons involved in currency transactions.

If a currency transaction exceeds \$10,000 and is suspicious, a casino or card club must file both a FinCEN Form 103 (reporting the currency transaction) and a FinCEN Form 102 (reporting the suspicious aspects of the transaction). All completed FinCEN Forms 103 (*i.e.*, with all information required) must be sent either electronically within 25 calendar days from the date of the transaction(s) through FinCEN's BSA Direct E-Filing System or through regular mail within 15 calendar days from the date of the transaction(s) to the IRS Detroit Computing Center's address found in the instructions to this form. See 31 C.F.R. § 103.27(a) and (d). Currency transactions in other operational aspects of a casino complex may be subject to other reporting requirements.

<sup>1</sup> A gaming day is defined as the normal business day of a casino or card club. For a casino or card club that offers 24-hour gaming, the term means that 24-hour period by which the casino or card club keeps its books and records for business, accounting, and tax purposes. For purposes of Bank Secrecy Act regulations, each casino or card club may have only one gaming day, common to all of its divisions. See 31 C.F.R. § 103.64(b)(4).

<sup>2</sup> After the fact aggregation is the process of checking internal casino computer information, rating cards, general ledgers, and other books and records to find reportable currency transactions. Such aggregation normally occurs after the gaming day, when all information has been gathered as to the particular day.



- FinCEN Form 104, *Currency Transaction Report*, is used by independent check cashers, money remitters, wire transfer companies, etc., operating inside or outside of a casino.
- FinCEN/IRS Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, is used by casino hotels, retail outlets, and other establishments. Cash for Form 8300 reporting purposes includes coin, currency and cashier's checks, bank drafts, traveler's checks, or money orders received during a 12-month period.

### **Structuring**

A financial institution, including a casino or card club, is prohibited from structuring, attempting to structure, or assisting in structuring transactions. Structuring pertains to conduct engaged in to evade a Bank Secrecy Act reporting or recordkeeping requirement. Structuring is unlawful under the Bank Secrecy Act, and could render a person subject to both civil and criminal penalties. *See* 31 U.S.C. §§ 5321, 5322, and 5324 and 31 C.F.R. § 103.63.

### **Recordkeeping**

There are extensive Bank Secrecy Act recordkeeping requirements for casinos and card clubs. The Bank Secrecy Act requires a casino or card club to maintain and to retain the following records that relate to its operation:

- records of transmittals of funds in excess of \$3,000 requiring the verification of identity, and the recording, retrievability and reporting of information to other financial institutions in the payment chain, regardless of the method of payment (*see* 31 C.F.R. § 103.33(f) and (g));
- records of each deposit of funds, account opened or line of credit extended, including a customer's identification and the verification of that identification as well as similar information for other persons having a financial interest in the account, regardless of residency (*see* 31 C.F.R. § 103.36(a));
- records of each receipt showing transactions for or through each customer's deposit or credit account, including a customer's identification and the verification of that identification, regardless of residency (*see* 31 C.F.R. § 103.36(b)(1));
- records of each bookkeeping entry comprising a debit or credit to a deposit account or credit account (*see* 31 C.F.R. § 103.36(b)(2));
- statements, ledger cards or other records of each deposit or credit account, showing each transaction in or with respect to the deposit or credit account (*see* 31 C.F.R. § 103.36(b)(3));
- records of each extension of credit in excess of \$2,500, including a customer's identification and the verification of that identification, regardless of residency (*see* 31 C.F.R. § 103.36(b)(4));
- records of each advice, request or instruction with respect to a transaction involving persons, accounts or places outside the United States, including a customer's identification, regardless of residency (*see* 31 C.F.R. § 103.36(b)(5));

- records prepared or received in the ordinary course of business that would be needed to reconstruct a customer's deposit or credit account (see 31 C.F.R. § 103.36(b)(6));
- records required by other governmental agencies, e.g., federal, state, local or tribal (see 31 C.F.R. § 103.36(b)(7));
- records prepared or used to monitor customers' gaming activity, e.g., player rating records, multiple transaction logs, etc. (see 31 C.F.R. § 103.36(b)(8));
- a list of transactions involving various types of instruments, cashed or disbursed, in face amounts of \$3,000 or more, regardless of whether currency is involved, including customer's name and address (see 31 C.F.R. § 103.36(b)(9)); and
- a copy of the written compliance program required by 31 C.F.R. § 103.64 (see 31 C.F.R. § 103.36(b)(10)).

Also, card clubs are required to maintain and to retain records of all currency transactions by customers, including, without limitation, records in the form of currency transaction logs and multiple currency transaction logs (see 31 C.F.R. § 103.36(b)(11)).

Casinos or card clubs which input, store, or retain, in whole or in part, for any period of time, any of the records described above on computer disk, tape, or other machine-readable media shall retain the records in such media. Also, a casino or card club is required to maintain the indexes, books, file descriptions and programs that would enable a person readily to access and review these computer records. See 31 C.F.R. § 103.36(c). A casino or card club must retain for a period of five years (either the originals or microfilm version, or other copies or reproductions of the documents) all records required to be retained by 31 C.F.R. Part 103. Records must in all events be filed or stored in such a way as to be accessible within a reasonable period of time. See 31 C.F.R. § 103.38.

## Employment Tax

Tribal gaming operations are subject to employment taxes if they have compensated workers. An employer must generally withhold income, Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. Federal employment taxes are imposed under the Federal Insurance Contributions Act (FICA) and federal income tax withholding requirements.

Federal employment tax also includes tax imposed under the Federal Unemployment Tax Act (FUTA). Effective for periods of employment after December 20, 2000, Indian tribes (as defined under the Indian Self-Determination and Education Assistance Act), as well as any business wholly owned by such an Indian tribe, are exempt from FUTA tax. Instead, an Indian tribal government may elect to make contributions to the state unemployment fund. If the tribe elects not to participate in the state unemployment program, the tribe is no longer exempted from FUTA and must pay

the FUTA tax and file Form 940, *Employer's Annual Federal Unemployment Tax Return*. Tribes should be aware that nonparticipation in the state unemployment program may make tribal employees ineligible for unemployment benefits. If the employer is not a qualifying Indian tribe or business wholly owned by a qualifying Indian tribe, or has elected to pay the tax, FUTA tax will be applicable. See IRS Publication 15, *Circular E, Employer's Tax Guide*, for information regarding FUTA tax filing and deposit requirements.

### **TEFAC Tribal Evaluation of Filing and Accuracy Compliance**

Tribal entities can now qualify to perform their own Compliance Check under a program known as TEFAC (Tribal Evaluation of Filing and Accuracy Compliance). Tribes interested in participating in TEFAC can submit a Request to Conduct Tribal Evaluation of Filing and Accuracy Compliance.

A Compliance Check is a review to determine whether a tribal entity is adhering to record keeping and information reporting requirements. It is neither an investigation under section 7605(a) of the Internal Revenue Code, nor an audit under section 530 of the Revenue Act of 1978. A Compliance Check does not directly relate to determining a tax liability for any past tax period, and does not involve the examination of books and records by the IRS. The Compliance Check is a tool to help tribal officials and employees increase voluntary compliance, and minimize the risk of error.

For more information go to the irs website [www.irs.gov/govt/tribes](http://www.irs.gov/govt/tribes).

**IRS Forms to File** – The Internal Revenue Code provides that for purposes of FICA and federal income tax withholding, the term “wages” means all payments received for “employment” with certain specified exceptions. Therefore, unless payments to employees are excepted from the term “wages” or the services performed by the employee are excepted from the term “employment,” such payments will be subject to FICA and federal income tax withholding. One exception to the general rule applies to salaries paid to elected tribal officials, (commonly known as council members) for services performed by them as council members. While these amounts are required to be reported on Form W-2 and are included in the elected official’s gross income, they do not constitute wages for purposes of FICA and federal income tax withholding. See Rev Ruling 59-354.

Independent contractors and employees are generally involved in gaming operations, and the gaming operation is responsible for filing certain IRS tax forms.

### **Independent Contractor vs. Employee**

If the tribal gaming operation has the right to direct and control the worker, that worker is an employee. In addition to the workers involved in the gaming operation, there may be other individuals that should be treated as employees, such as valet parkers and grounds-keepers.

With respect to employees, each employer is responsible for filing IRS Form W-2, *Wage and Tax Statement*, and IRS Form 941, *Employer's Quarterly Federal Tax Return*. To know how much income tax to withhold from employees' wages, employers should have a Form W-4, *Employee's Withholding Allowance Certificate*, on file for each employee.

<i>Form</i>	<i>Employer's Responsibility</i>	<i>When</i>
W-2	Furnish employee a copy of Form W-2	By January 31 of the year following year of payment
W-2	Furnish W-2 to the Social Security Administration (SSA)	By the last day of February of the year following year of payment. Use Form W-3, <i>Transmittal of Income and Tax Statements</i> , to transmit to SSA.
W-4	Request signed W-4 from all employees	Request should be made as soon as an employee starts work and should be effective with the first wage payment.
940	Each employer is responsible for filing Form 940 Federal Unemployment Tax, unless participating in the State unemployment system and in full compliance with its requirements.	This form is filed annually
941	Each employer is responsible for filing Form 941 – reporting wages, federal income tax withholding, Social Security & Medicare tax withholding each quarter.	The return is due the last day of the month following the end of the calendar quarter.




### Independent Contractor vs. Employee Continued

The tribal gaming operation may have to file information returns to report certain types of payments made during the year to workers who are not treated as employees. One example could be entertainers who are hired for a show. If the company hired to perform services for the tribal gaming operation is incorporated, issuance of IRS Form 1099-MISC, *Statement for Recipients of Miscellaneous Income*, is not generally required; however, some exceptions exist, such as payments for medical services and payments to attorneys. If a question exists concerning the liability to issue Form 1099-MISC, refer to IRS Publication 15 or contact the Indian Tribal Governments specialist in your area for assistance.

A trade or business must file IRS Form 1099-MISC to report payments of \$600 or more to persons not treated as employees for services performed in a trade or business. The \$600 threshold applies to all payments made during the calendar year, not to any one payment.

The tribe is required to secure the TIN of the worker prior to making the first payment. Form W-9 Request for Taxpayer Identification Number and Certification, should be completed by the worker and submitted to the casino **before** services are provided and payments are made. Form W-9 is used to request payees to furnish a TIN and to certify that the number is correct (certification).

**Example 1:** A tribe pays John \$1,000 per week to clean the hall where the bingo sessions are held. John operates his own janitorial service that performs work for numerous entities, has the right to hire and fire his own help, and provides his own tools and supplies. The tribe should file Form 1099-MISC for John. The tribe does not have the right to direct and control John. Therefore, he is not an employee of the tribe.



**Example 2:** A tribe pays Jack \$500 per week to clean the hall where the bingo sessions are held. Jack works for only this tribe, does not have the right to hire and fire assistants, and the tribe requires that he personally does the work. The tribe provides the supplies and tools for Jack. Based on the above facts, Jack is an employee. The tribe should withhold income tax and employment taxes, and report the payments on Form W-2.

**Reporting Tip Income** – All tips received by an employee are taxable income subject to federal income tax. An employee must include in gross income all tips: received directly from customers; tips from charge customers that are paid to an employee by an employer; and tips from an employee's share of a tip-splitting or tip-pooling arrangement. Tips paid in cash (or checks or other cash equivalent, including charged tips) of \$20 or more that an employee receives in a calendar month while working for any one employer are wages subject to FICA and federal income tax withholding. Tips of less than \$20 received by an employee during a calendar month while working for a particular employer are not wages for FICA or federal income tax withholding purposes, even though such tips are taxable income. Once the amount of tips received in a calendar month reaches \$20 from any one employer, the entire amount of tips received must be reported to the employer and be included in wages, not just the amount over \$20.

An employee who receives \$20 or more in tips must report those tips in writing to his or her employer by the tenth day following the month in which the tips are received.

**Example:** Joe is a dealer at a tribal casino. He received \$800 in tips in March. Joe must report them to the tribal gaming operation conducting the gaming (employer) by April 10, or more frequently if required by the employer; and the tips are subject to FICA and federal income tax withholding.

#### **Tip Rate Determination/Education Program (TRD/EP)**

Compliance with tip income reporting requirements can be one of the most complicated and difficult issues for employers and employees. If noncompliance exists, both parties can be liable for payment of significant tax, penalties, and interest. In an effort to reduce burden and ensure compliance, the IRS has developed TRD/EP to improve tip-reporting compliance by employers and employees. The Indian Tribal Governments office of the Internal Revenue Service offers workshops and presentations on tip income reporting. In addition to participating in educational and outreach programs, gaming operations may enter into a Tip Rate Determination Agreement (TRDA) or a Gaming Industry Tip Compliance Agreement (GITCA).

- **TRDA** – Under this arrangement, the employer determines tip rates for various occupations within the establishment using historical tip data. The IRS reviews the data and validates the rates. At least 75 percent of the tipped employees must agree to participate by signing a Tipped Employee Participation Agreement. This arrangement is available for all tipped employees, gaming or non-gaming, at the casino.



- **GITCA** – Under this arrangement, a gaming industry employer and the Internal Revenue Service may work together to reach a Gaming Industry Tip Compliance Agreement that objectively establishes minimum tip rates for tipped employees in specified occupational categories, prescribes a threshold level of participation by the employer’s employees, and reduces compliance burdens for the employee and enforcement burdens for the IRS. See Revenue Procedure 2007-32 for more information on Gaming Industry Tip Compliance Agreements.

IRS Form 4070, *Employee’s Report of Tips to Employer*, may be used for recording and reporting tip income. The employer may require more frequent reporting of tips. The employer must withhold FICA and federal income tax on reported tips. See IRS Publication 531, *Reporting Tip Income*, for more information.

**How to make Federal Tax Payments** – In general, you must deposit backup withholding, gambling withholding, income tax withheld, and both the employer and employee Social Security and Medicare taxes.

### When to make Deposits

In order to determine when to make deposits, you must determine your deposit schedule. There are two deposit schedules, monthly and semi-weekly. Your deposit schedule will be based on a four-quarter look-back period that ends June 30 of the prior calendar year. If you reported \$50,000 or less of tax for the look-back period, you are a monthly-schedule depositor. If you reported more than \$50,000, you are a semiweekly-schedule depositor. See IRS Publication 15 for more information. The federal deposit requirements for Form 1042 are different than the Form 945 requirements. See the deposit requirements detailed in the instructions for the Form 1042.



### Next Day Deposit Rule


If you accumulate a tax liability of \$100,000 or more on any day during a deposit period, you must deposit the tax by the next banking day, whether you are a monthly or semiweekly schedule depositor. For more information about the \$100,000 One-Day Rule and the applicable deposit period, refer to Publication 15, Circular E, Employer’s Tax Guide <<http://www.irs.gov/publications/p15/index.html>>, Depositing Taxes.

### Electronic Deposit Requirement

You must make electronic deposits of all depository taxes using the Electronic Federal Tax Payment System (EFTPS) in 2008 if:

1. Your total deposits of depository taxes in 2006 were more than \$200,000, or
2. You were required to use EFTPS in 2007 or any prior year.

If you are required to use EFTPS and fail to do so, you may be subject to a 10% failure-to-deposit penalty.



New employers are automatically pre-enrolled in EFTPS, giving them the opportunity to choose the government's free electronic payment program, rather than using coupons. New employers have the option to order Federal Tax Deposit (FTD) coupons if they want to make additional payments by check, but will need to allow 5-6 weeks for coupons to arrive by mail. The number to call for ordering coupons is 1-800-829-4933.

The IRS tracks the number of coupons used and sends more automatically. If you are a new employer you will not automatically receive subsequent coupons until after you place your initial order.

Use Form 8109-B if you are unable to obtain preprinted forms. You can call 1-800-829-4933, or visit your local IRS office to get Form 8109-B.

**Note:** If you choose to visit your local IRS office, the IRS personnel are required to complete the Form 8109-B information identifying the depositor before issuing the coupon.

Additionally, you must be a responsible official of the business OR have a signed Power-of-Attorney or Tax Information Authorization (or have one on file with the IRS) to receive the completed Form 8109-B.

#### **Trust Fund Tax (Failure to Withhold and Pay Employment Tax)**

– A trust fund recovery penalty may apply when trust fund tax (i.e., employment tax), that should be withheld, is not withheld or is not paid to the IRS.

This penalty can be applied to any entity, including governmental entities such as Indian tribes. Under this penalty, certain officers or employees of a tribal gaming operation could become personally liable for payment of the tax and could be penalized an amount equal to the unpaid tax. This penalty may be applicable when unpaid tax cannot be immediately collected from the tribal gaming operation. The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, and paying-over this tax, and who acted willfully in not doing so. Willfully, in this case, means voluntarily, consciously, and intentionally.

### **Tax on Wagering** (Application of Excise Tax)

This section explains the application of excise tax on wagering (wagering tax and occupational tax) on tribal gaming operations conducting certain games, such as bingo games, pull-tabs, raffles, and tip boards.

Tribes which conduct gaming activities should be aware that wagering tax and occupational tax might apply based upon the gaming activities that are offered. The facts and circumstances of the types of wagering conducted, as well as the benefits derived, may have a bearing on whether the wagers are subject to tax.

There are two types of wagering tax: wagering tax imposed on the amount of a wager; and an occupational tax imposed on persons engaged in receiving taxable wagers.

In general, the tax on wagering applies to:

- wagers placed on a sports event or contest with a person engaged in the business of accepting such wagers
- wagers placed in a wagering pool on a sports event or contest, if the pool is conducted for profit
- wagers placed in a lottery conducted for profit (other than a state-conducted lottery)

*Note:* Pull-tabs, raffles, and tip jar games generally are taxable lotteries. Bingo (not instant bingo) is specifically excluded from the wagering tax. Keno may or may not be excluded from the wagering tax. The general rule is if it is a live Keno game, meaning all players are present and winnings are paid before the beginning of the next game, then it is not subject to the gaming excise tax. Generally, with Keno games over 20, the player may leave and collect his winnings at a later date (usually up to one year). This type of Keno game would be subject to the wagering tax. Contact the Indian Tribal Governments specialist in your area with questions regarding the applicability of the wagering tax to a specific game.

The amount of the wager upon which tax is imposed is the amount risked by the bettor, including any charge or fee incident to placing the wager. The taxable amount does not depend on the amount that a bettor may win in the wager.

The law specifically exempts certain wagers from the wagering tax. They include those placed with a pari-mutuel wagering enterprise licensed under state law; in a coin-operated device; or in a sweepstake, wagering pool, or lottery that is conducted by a state or state agency, if the wager is placed with the agency or its authorized agents or employees.

**Wagering Tax** – The wagering tax is imposed on gross wagers received. The tax is based on the total amount received before any payout of prizes or other expense.

**Example:** The wagering tax applies to an organization selling pull-tabs. The tax applies to the gross sales per box. If a box of \$1 pull-tabs contains 2,400 cards and the entire box is sold, the tax is computed on \$2,400.

### Rate of Tax

The rate of tax depends upon whether the wager is authorized under the law of the state in which it is accepted. 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 are \$1,000, the tax is \$2.50 ( $\$1,000 \times .0025$ ). If a wager is not authorized under the law of the state in which it is accepted, the rate of tax is 2 percent of the wager. Thus, if the gross wagers are \$1,000, the tax is \$20 ( $\$1,000 \times .02$ ).

### Filing IRS Form 730, *Tax on Wagering*

Form 730 is a monthly return that must be filed by all persons subject to tax by the last day of the month following the month for which taxable wagers are reported. Once a taxpayer begins filing, Form 730 must be filed in each month until a final return is filed, even if the taxpayer receives no wagers in a month. These returns will report a liability of zero for the month. If the taxpayer stops accepting wagers, a final Form 730 must be filed. The “Final Return” box should be checked on the form. The instructions to Form 730 provide additional filing information. A tribe may be subject to a penalty for failure to file the form and for failure to pay the tax.

**Occupational Tax** – The occupational tax is imposed on those who receive wagers that are subject to tax. The tax applies to persons receiving taxable wagers, whether they receive compensation or are volunteers.

Persons required to pay tax shall register certain information with the IRS. This includes both principals (persons in the business of accepting taxable wagers on their own behalf) and agents (persons who accept taxable wagers on behalf of a principal). Both principals and agents must file IRS Form 11-C, *Occupational Tax and Registration Return for Wagering*, to register and to pay the occupational tax **before** wagers are accepted and annually thereafter. An employer identification number (EIN) must be used on Form 11-C, not a social security number (SSN). If a principal or agent does not have an EIN, apply for one online. Go to the IRS website at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small) and click on the “Employer ID Numbers” link. You may also apply for an EIN by calling 1-800-829-4933, or you can fax or mail Form SS-4, Application for Employer Identification Number, to the IRS. If you mail the Form SS-4 to the IRS, attach a copy of the SS-4 to the Form 11-C when the Form 11-C is filed.

**Example:** A tribe sells pull-tabs and arranges for 10 people to receive wagers from the public on the tribe’s behalf. The tribe also employs a secretary and a bookkeeper. The tribe and each of the 10 persons are liable for the occupational tax. They must each file Form 11-C and pay occupational tax. The secretary and bookkeeper are not liable for the tax unless they also accept wagers for the tribe.

### Amount of the Tax

The amount of the occupational tax depends on whether or not the wager is authorized under the law of the state in which it is accepted. If the wager is authorized under the law of the state in which it is accepted, the amount of the occupational tax is \$50 per year per person. For all other wagers, the amount of the tax is \$500 per year per person.

**Example:** A tribe sells pull-tabs at its tribally-owned gasoline stations through paid employees of the tribe. In this state where the tribe is located, the sale of pull-tabs must be conducted by volunteer labor. The tribe is liable for the wagering tax at a rate of 2 percent. Because it is liable for the tax, the tribe is also subject to the occupational tax at the amount of \$500 per person selling pull-tabs.

The tribe is subject to the 2 percent rate and \$500 amount because the wager is not authorized under the law of the state in which it is accepted. State law only allows the sale of pull-tabs by volunteer labor, and this tribe uses paid cashiers to sell the pull-tabs.

## Distributions from Gaming Revenue (Reporting and Withholding)

**Per Capita Payments** – Under IGRA, net revenues from Class II or Class III gaming activities conducted or licensed by an Indian tribe may be used to make per capita payments to members of the tribe only if four conditions are met.

**Condition 1.** The tribe must prepare a plan to allocate revenues only for uses authorized under IGRA. These uses are to: fund tribal government operations or programs; provide for the general welfare of the Indian tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government and agencies.

**Condition 2.** The plan must be approved by the Secretary of the Interior as adequate, particularly with respect to the use of revenues to fund tribal government operations or programs and to promote tribal economic development.

**Condition 3.** The interests of minors and other legally incompetent persons entitled to receive any of the per capita payments must be protected and preserved, and payments are to be disbursed to the parents or legal guardian of such persons as necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe.

**Condition 4.** The per capita payments are subject to federal taxation and the tribe must notify members of such tax liability when payments are made.

**Guidelines to Govern the Review and Approval of Per Capita Distribution Plans** – The Department of Interior issues *Guidelines to Govern the Review and Approval of Per Capita Distribution Plans*. These guidelines set forth the procedures regarding the submission, review, and approval of tribal revenue allocation plans or ordinances relating to the distribution of net revenues from a gaming activity. Under the guidelines, a tribal revenue allocation plan or ordinance (allocation plan) providing for the distribution of net gaming revenues shall be approved if the allocation plan provides sufficient detail to determine that it complies with the guidelines and IGRA. Also, the tribe must provide a percentage breakdown of the uses to which the tribe intends to allocate its net gaming revenues, and the allocation plan shall provide that the tribe plans to dedicate a significant portion of its net gaming revenues to one or more purposes as cited in the guidelines.

The guidelines define “per capita” payments as those payments made or distributed to all members of a tribe or to identified groups of members that are paid directly from the net revenues of any gaming activity. Per capita payments do not include payments authorized by a tribe for special purposes or programs, such as social welfare, medical assistance, or education. Even though a tribal member may receive payments from net revenue for social welfare, medical assistance, or education, a tribe’s designation of these payments is not determinative of their tax status.

Certain “need”-based payments may not be taxable. Although there is no express statutory exclusion for a welfare benefit, government disbursements promoting the general welfare of a tribe may not be taxable. Grants received under social welfare programs that did not require recipients to establish *individual need* have not qualified for tax-exempt status. Individuals are required to estab-

lish “need.” For information on these specific issues, contact the Indian Tribal Governments specialist in your area.

**Gaming Distributions** – 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.

Additional distributions from gaming revenue, regardless of whether they are made on an equal (“per capita”) basis, are generally also required to be reported on Forms 1099 and included as income by the recipient. These distributions include, but are not limited to, payments made on behalf of tribal members and the fair market value of goods and services provided to tribal members.

One of the requirements for the distribution of gaming revenues to tribal members under the Indian Gaming Regulatory Act is that the interests of minors be protected.

To meet this requirement, many tribes have established trusts for minors. Rev. Proc. 2003-14 provides information on trusts established for the receipt of gaming revenue under the Indian Gaming Regulatory Act (IGRA) for the benefit of minors and legal incompetents.

The Revenue Procedure clarifies in which instances the deposits into a trust are taxable at the time the deposits are made, and when taxability occurs at the time disbursements from the trust are made to the beneficiaries.

Tribes considering establishing trusts for minors should take into account the potential tax imposed on certain unearned income of minor children at the allocable parental tax rate. For tax years beginning after May 25, 2007, the kiddie tax applies to children who are under age 19 or, if a full time student, under age 24 (IRC Sec. 1(g)(2)(A), as amended by the Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)).

**Withholding Requirements of Distributions from Net Gaming Revenue** – Identifying the initial source of funds used for the distribution is an important aspect of reporting requirements. Unless specifically exempt from taxation, the amounts that make up the distributions are taxable and subject to the requirements of filing IRS Form 1099-MISC, *Statement for Recipients of Miscellaneous Income*. A 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-MISC when a payment was made to the tribal member.

It is only the amount distributed from net gaming revenue that is subject to withholding. The Internal Revenue Code 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.”



The withholding tables are found in IRS Publication 15-A, *Employer's Supplemental Tax Guide*.

**Example:** A regular monthly per capita payment of \$5,000, subject to IRC section 3402(r), is issued to all tribal members. An additional per capita payment of \$5,000, also subject to IRC section 3402(r), is made during December.

In that instance, for the month of December, the computation for withholding on monthly per capita payments would be based on the aggregate payment amount of \$10,000.

If the computations were based on separate \$5,000 payment amounts, under withholding would have occurred and the tribe would be potentially liable under IRC section 3402(r).

According to IRC section 3402(r), the tribe is potentially liable for the difference between the amount required to be withheld pursuant to the tables and the amount actually withheld.

The Social Security number of all payees should be secured prior to making payments. Otherwise, the tribe is potentially liable for backup withholding provisions pursuant to IRC section 3406.

## Filing Requirements (IRS Tax Forms)

**IRS Tax Forms to File for Gaming Activities** – Tribal organizations conducting gaming activities generally handle and prepare the following forms

<i>Tax Form</i>	<i>Filing Frequency</i>
Form 11-C, <i>Occupational Tax and Registration Return for Wagering</i>	Before accepting wagers, then Annually
Form 730, <i>Tax on Wagering</i>	Monthly
*Form 940, <i>Employer's Annual Federal Unemployment Tax Return</i>	Annually
Form 941, <i>Employer's Quarterly Federal Tax Return</i>	Quarterly
Form 944 <i>Employer's Annual Federal Tax Return</i>	Annually**
Form 945, <i>Annual Return of Withheld Federal Income Tax</i>	Annually
Form 1042-T, <i>Annual Summary and Transmittal of Forms 1042-S</i>	Annually
Form 1042, <i>Annual Withholding Tax Return for U.S. Source Income of Foreign Persons</i>	Annually
Form 1042-S, <i>Foreign Person's U.S. Source Income Subject to Withholding</i>	Annually
Form 1096, <i>Annual Summary and Transmittal of U.S. Information Returns</i>	Annually
Form 1099-MISC, <i>Statement for Recipients of Miscellaneous Income</i>	Annually
Form 5754, <i>Statement by Person(s) Receiving Gambling Winnings</i>	Casino retains form
Form 8027, <i>Employer's Information Return of Tip Income and Allocated Tips</i>	Annually
Form 8109, <i>Federal Tax Deposit Coupon</i>	Ongoing
FinCEN 102 <i>Suspicious Activity Report for Casinos</i>	Required to be filed within 30 days after the initial detection of a suspicious transaction.
FINCEN 103, <i>Currency Transaction Report by Casinos</i>	15th day after transaction
Form W-2, <i>Wage and Tax Statement</i>	Annually
Form W-2G, <i>Certain Gambling Winnings</i>	Annually
Form W-3, <i>Transmittal of Wage and Tax Statements</i>	Annually

The use of a promoter or contractor to operate gaming for a tribal government does not relieve the tribe of its responsibility to file the appropriate forms.

\* If not participating in a state unemployment program.

\*\* You must file annual Form 944 instead of filing quarterly Forms 941 only if the IRS notified you in writing.

## Reporting and Withholding Gaming Winnings (Common IRS Forms)

### Forms W-2G, 945, 1042, 1042-S

Certain wagering transactions require the filing of Form W-2G and IRS Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*. Form W-2G is filed when an individual(s) wins a prize with a minimum specific dollar amount at a gaming event. Generally, gambling winnings are reportable if the amount paid reduced, at the option of the payer, by the wager is (a) \$600 or more

and (b) at least 300 times the amount of the wager. However, these requirements do not apply to winnings from bingo, keno, and slot machines. If winnings from a *keno* game (reduced by the wager) are \$1,500 or more, they are reportable gaming winnings. If the winnings (not reduced by the wager) from a *bingo* game or *slot machine* are \$1,200 or more, they are reportable gaming winnings.

Current regulations require the gaming operator to provide a general description of two types of identification (e.g., "driver's license", "social security card", or "voter registration card") furnished to the gaming operator to verify the winner's name, address, and social security number. The winner must provide the game operator with his or her taxpayer identification number (TIN). Form W-9, Request for Taxpayer Identification Number and Certification, may be used to record the information. If the winner does not provide his/her taxpayer identification number, the gaming operator must withhold tax (known as backup withholding) at the current backup withholding rate. See the section on backup withholding (pages 26-27) for more information on this topic, including Form 945 filing requirements. Form 1042-S filing and withholding requirements on foreign winners, as well as Form 1042 filing requirements, are covered on page 27-28.

**Regular Bingo Game Prizes** – A single bingo prize of \$1,199.99 or less does not require the completion of Form W-2G or the withholding of federal income tax. A single bingo prize of \$1,200 or more requires the completion of Form W-2G by the bingo game operator. The winner of a single prize of \$1,200 or more must furnish the bingo game operator with his or her TIN, which is typically the taxpayer's social security number (SSN). See above explanation for identification requirements to verify name address and social security number. If the winner does not provide a taxpayer identification number, the bingo game operator must withhold tax (known as backup withholding) at the current backup withholding rate. See the section on backup withholding (page 26) for more information on this topic.

**Example 1:** A tribal gaming operation conducts a weekly bingo game. A payout of \$1,300 is made for a single game. The winner furnishes identifying information, along with the winner's TIN to the tribe. The tribal gaming operation must complete Form W-2G, but is not required to withhold income taxes.

**Example 2:** If the winner in Example 1 had refused to provide the TIN, Form W-2G would be completed without the TIN, and backup withholding applies. The income tax withheld is reported on Form 945, *Annual Return of Withheld Federal Income Tax*. Note: The winner would receive \$936 (\$1,300 gross winnings minus \$364 federal income tax withheld at the rate of 28 percent). In 2008 the backup withholding rate is 28%.

**Lotteries, Sweepstakes, Horse Races, Dog Races, Instant Bingo Game Prizes/Pull-Tabs, Jai Alai, and Other Wagering Transactions** – A single prize of \$599.99 or less involving lotteries, sweepstakes, horse races, dog races, instant bingo game prizes/pull-tabs, jai alai, and other wagering transactions does not require completion of Form W-2G or the withholding of federal income tax. A single prize of at least \$600, but not more than \$5,000, requires the completion of a Form W-2G if the prize is at least 300 times the amount of the wager. See above explanation for identification requirements to verify name address and social security number. The winner must furnish the game operator proper identification along with his/her TIN, or the game operator must withhold tax at the current backup withholding rate. Backup withholding applies to the amount of winnings reduced, at the option of the payer, by the amount wagered. See section Form 945, *Annual Return of Withheld Federal Income Tax*, on page 25, for more information on this topic.

A single prize, less the wager, exceeding \$5,000 requires the completion of Form W-2G, and regular gambling withholding, at the current rate, of the net winnings.

**Example 1:** A tribal gaming operation sells pull-tabs at its weekly bingo session. Each pull-tab costs \$1. One type of pull-tab sold pays a progressive jackpot, that is, the winning ticket from each box entitles the ticket holder to select a number from a second punchboard without making an additional wager. If the ticket holder selects the winning punchboard number, the holder wins the jackpot. If the winning ticket holder does not select the winning punchboard number, the holder may be paid a consolation prize. The jackpot is increased and carried over to the next box of pull-tabs sold. If a patron wins \$100 on the winning ticket from the box of pull-tabs, and then selects a winning number from the progressive punchboard that pays \$550, a Form W-2G must be completed. Since the purchase of the initial ticket entitled the patron to both amounts, the amounts are combined and considered as a single prize of \$649.

**Example 2:** A tribal gaming operation sells instant bingo game tickets. A winner receives \$950 from one of the pull-tabs, which cost \$1. The winner refuses to provide his/her identification number; therefore, the tribe must complete Form W-2G and withhold 28% of the winnings. The income tax withheld is reported on Form 945. The winner receives \$684.28 (\$950 gross winnings minus \$265.72 federal income tax withheld). (Computed \$950 minus \$1 wager, times 28 percent)

**Example 3:** A tribal gaming operation has another winner of \$5,100 from one of the pull-tabs, which cost \$10. Because the winnings, less the wager, exceed \$5,000, a Form W-2G must be completed and federal income tax withheld. The income tax withheld is reported on Form 945. Assuming that the winner provides identification, the winner receives \$3,827.50 (\$5,100 gross winnings less \$1,272.50 withholding tax). (Computed \$5,100 minus \$10 wager, times 25 percent)

**Multiple Winners** – When paying out a prize from a wagering activity, a tribal gaming operation needs to determine whether the prize is being paid to a member of a group of two or more winners on a single ticket, or is being paid to a person who is not the actual winner.

If prizes are paid to a member of a group of two or more winners on a single ticket, or paid to a person who is not the actual winner, the tribal gaming operation must complete IRS Form 5754, *Statement by Person(s) Receiving Gambling Winnings*. The completion of Form 5754 enables the tribal

gaming operation to prepare Form W-2G. There are two parts to Form 5754 – the first lists the identification of the person to whom the winnings are paid, and the second part lists the actual winners and their respective share of the winnings. The tribal gaming operation must use the information to complete Form W-2G for each winner. Form 5754 is not submitted to the IRS, but should be kept with tribal tax records for a period of four years.

The determination of whether a Form W-2G is required is based on the amount of the prize paid on the winning ticket, not each individual's share of the prize.

**Example:** A tribe sells pull-tabs at its weekly bingo session. John Doe and Judy Smith jointly purchased a \$1 pull-tab that was the winning ticket of a \$1,200 jackpot. Form 5754 reporting requires that individuals sharing a prize must do so proportionally. In other words if the prize is being claimed by two people they each get half. If the prize is being claimed by three people they each get a third.

If John and Judy contributed equal amounts toward the purchase of the ticket and agreed to share equally in any prizes won, Form 5754 would be completed as follows:

- *Part I.* List the name, address and identification number of the individual to whom the prize was actually paid (prize must be paid to one individual). In the box for amount received, include the total \$1,200 prize.
- *Part II.* List John Doe's name, address and identification number. Include in box (d) \$600 as the amount won (his share of the prize). List Judy Smith's name, address and identification number. Include in box (d) under her name \$600 (her share of the \$1200 prize).
- *Signature.* Form 5754 must be signed and dated by the party receiving payment of the prize from the tribal gaming operation, if federal income tax is withheld.

The Form W-2G should be completed by the tribal gaming operator upon payment of the prize to the winner. Copies B, C, and 2 of this form may be given to the prize winner at the time of completion. However, Copies B, C, and 2 of the W-2G are required to be furnished to the winner no later than January 31 of the following year. Copy A of Form W-2G and Form 1096 must each be submitted to the IRS by February 28 of the year following the year the gaming winnings were paid. Copy 1 of W-2G is submitted to the state and the payer retains Copy D.

The tribal gaming operation may be required to file Forms W-2G and 1099-MISC electronically. Generally, if you are required to prepare and file 250 or more information returns, you must file electronically. For returns filed after December 31, 2008, Enterprise Computing Center – Martinsburg (ECC-MTB) will no longer accept tape cartridges. Electronic filing will be the only acceptable method for filing information returns with ECC-MTB. You may choose electronic filing even if you are not required to file electronically. The 250-or-more requirement applies separately to each type of form.

**Example:** If you must file 500 Forms W-2G and 100 Forms 1099-Misc, you must file Forms W-2G electronically, but you are not required to file Forms 1099-Misc electronically.

## **FIRE**

FIRE is Filing Information Returns Electronically System. FIRE is used to file the following information returns: Form 1042-S, 1098, 1099, 8027, and W-2G. If you file 250 or more of the prior listed returns for any calendar year, you must file your information returns electronically or magnetically. If you file less than 250 information returns, then you can voluntarily use the FIRE System.

The benefits of FIRE are as follows: it's paperless no Form 4804 requirements; it's secure the system supports SSL 128-bit encryption; it's easy to use; it's efficient with a 1-2 day notification of receipt of returns; it's fast because transmission time is reduce by up to 95%; and it's flexible because due dates are extended for electronically filed forms 1098, 1099, and W-2G.

### *How do you enroll?*

Complete Form 4419 Application for Filing Information Returns Electronically/Magnetically and mail to IRS-Martinsburg Computing Center (MCC). You can also contact MCC at their customer service toll free number 1-866-455-7438 between the hours of 8:30am and 4:30pm Eastern Standard Time Zone or email them at fire@irs.gov.

## **Prizes - What Do I Issue?**

### **Prizes - What Do I Issue, Form 1099 or W-2G?**

**Example 1:** The casino has an hourly cash giveaway drawing for their poker players. In the largest drawing, the winner receives a ticket to the World Series of Poker. All these funds are a portion of the bets placed by the poker players. When a poker player makes bets, the bets are divided out three ways: the casino keeps a portion as a fee, a portions is saved for promotional giveaways, and the remaining portion is given to winners. The casino does NOT add any additional funds. The giveaway is not a wagering transaction. The player doesn't put up money, but could be a prize winner.

Therefore, the casino issues a Form 1099-MISC for their cash giveaway drawings.

**Example 2:** The casino has a 4th of July drawing for a vehicle. Players that put at least \$1,000 cash-in into slot machines, receive a ticket. Also, any table game player that buys-in with \$100 or more will receive a ticket. All the drawing tickets are dropped into a secure box and held until the day of the drawing.

On the 4th of July, a ticket is drawn, and the winner receives the vehicle. The casino issues a Form 1099-MISC to the winner

A Form 1099-MISC must be issued to each patron that receives \$600.00 or more in a calendar year. Separate transactions involving the same patron should be aggregated and reported on a single 1099-MISC as shown by the following example:



Jim wins a television with a fair market value of \$800.00 in a drawing on January 17, 2008. On October 16, 2008 Jim wins a cash door prize of \$300.00. A Form 1099-MISC would be issued to Jim for \$1,100.00 for 2008.

The following chart describes when a W-2G generally must be issued:

<i>Type of Game</i>	<i>Amount of Prize Paid is Equal to or Greater Than</i>
Lotteries, Sweepstakes, Horse Races, Dog Races, Instant Bingo Game Prizes/Pull-Tabs, Jai Alai and other wagering transactions	\$600
Bingo	\$1,200
Slot Machines	\$1,200
Keno	\$1,500

**Penalties** may be assessed against a gaming operator if the information shown on the Form 1099 or Form W-2G is incomplete or incorrect. ITG has created a “Helpful Hints to Avoid Penalties” guide, which is available on the ITG web site ([www.irs.gov/tribes](http://www.irs.gov/tribes)) under the **Employment Tax** page. Hopefully, the suggestions outlined in that guide will reduce penalty assessments, but if a penalty is asserted, the guide also outlines the steps required to address the penalty.

#### **Form 945, Annual Return of Withheld Federal Income Tax**

In addition to the information reporting requirements of Form W-2G and Form 1096, tribal gaming operations are subject to certain withholding requirements as described below.

**Withholding** – Tribal gaming operations making payment of certain gambling winnings must withhold tax from these payments. The tribal gaming operation will report the amount of gambling withholding for federal purposes on Form 945. If there are Tribal-State compact requirements for state withholding, that amount should be reported on the applicable state forms.

Winnings that are subject to regular gambling withholding are payments from:

- a wager placed in a state-conducted lottery if the proceeds from the wager exceed \$5,000
- a wager placed in a sweepstake, wagering pool, or lottery (other than a state-conducted lottery), if the proceeds from the wager exceed \$5,000
- a wagering transaction, including wagers in a pari-mutuel pool with respect to horse races, dog races, or jai alai, where the proceeds are more than \$5,000, and the amount of such proceeds is at least 300 times as large as the amount wagered

*Note:* Winnings of \$600 or more with the amount paid at least 300 times the amount of the wager from any wagering transaction (including wagers in a pari-mutuel pool with respect to horse races, dog races and jai alai) are reportable on Form W-2G. They are not subject to withholding unless the proceeds are more than \$5,000 and the amount paid is at least 300 times the amount of the wager.

Regular gambling withholding applies to the total amount of gross proceeds, not merely the amount in excess of \$5,000.

**Regular Withholding Rates on Gambling Winnings**

<i>Tax Year Effective Date</i>	<i>Rate/Percentage</i>
2005/current	25%

**Backup Withholding** – Backup withholding refers to the withholding of tax that applies to reportable prizes when the prize winner fails to provide a taxpayer identification number (TIN) to the tribal gaming operation. If the TIN does not contain nine digits or contains alpha characters, then the prize winner has not provided a valid TIN. Generally, Form W-9, Request for Taxpayer Identification Number and Certification, is used to request a patron's taxpayer identification number. If payment is made **before** securing the TIN, the payor (tribe) may be held liable for backup withholding taxes. The following chart illustrates the backup withholding rates.

<i>Tax Year Effective Date</i>	<i>Rate/Percentage</i>
2005/current	28%

**Example 1:** A tribe owes a pull-tab prize of \$751 to a single ticket winner from a \$1 wager. The winner would only give his name. Since the winner failed to supply a TIN, the tribe should collect backup withholding of \$210 (\$751 minus \$1.00 wager times 28 percent) and pay the winner \$541 (\$751 - \$210). If the winner had supplied his/her TIN, no withholding would be required.

**Example 2:** A tribe owes a single pull-tab prize of \$6,000. The winner provides an SSN. The tribe should withhold \$1,500 (\$6,000 X 25 percent) and pay the winner \$4,500 (\$6,000 - \$1,500).

**Noncash Prizes** – If a prize is not cash, the fair-market-value of the item won is considered the amount of the winnings. The withholding and backup withholding rates, if required, are applied to the fair-market-value of the item won. The amount may either be collected from the prize recipient before the prize is delivered, or the casino may pay the taxes on the winner's behalf and increase the amount of the prize. Please see the W-2G Instructions for non-cash prizes for detailed examples.

**Reporting the Withholding** – The tribal gaming operation reports regular withholding from gaming winnings on Form 945, line 1. Backup withholding is reported on Form 945, line 2. Form 945 is filed annually by January 31st of the year following the year of the winnings. (Note: If you made deposits on time in full payment of the taxes for the year, you may file by February 10.)

The following chart identifies games and when withholding and backup withholding are required.

<i>Game</i>	<i>Regular Gambling Withholding Prizes More Than</i>	<i>Backup Withholding Prizes Equal to or More Than</i>
Bingo	N/A	\$1,200
Slot Machines	N/A	\$1,200
Keno	N/A	\$1,500
Wagering transaction (\$5,000 or less)	N/A	\$600
Lotteries, sweepstakes, horse races, dog races, instant bingo game prizes/pull-tabs, and jai alai	\$5,000	\$600
Wagering transactions when winnings are at least 300 times the amount wagered	\$5,000	\$600

***Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding***

Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, is used to report payments made to nonresident aliens and required withholding. Form 1042-T is filed with paper Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. All of these forms are submitted to the Internal Revenue Service by March 15th of the following year.

If you file 250 or more Forms 1042-S during a year, then the casino must submit them electronically. Electronic submissions are filed using the Filing Information Returns Electronically (FIRE) System. The FIRE System operates 24 hours a day, 7 days a week, at <http://fire.irs.gov>. For more information, see Publication 1187.

Beginning with tax year 2008, processing year 2009, Form 1042-S can no longer be filed using magnetic media. Form 1042-S for 2008 and later years can only be filed on paper or electronically.

**How do you verify if the winner is a resident or nonresident alien?** If someone wasn't able to provide their valid drivers license and their social security number, then you should request other forms of identification. Usually nonresident aliens (commonly known as foreign persons) are visitors from other countries or temporarily residing in the U.S. In some cases, the winner might not have a passport or visa.

An alien may have one or more of the following forms of identification cards: U.S. or foreign driver's license, national identification card, U.S. state issued identification card, passport, visa, U.S. military identification card, U.S. Citizenship and Immigration Service (USCIS) photo identification, and/or resident alien card (so called the "green card").

If the individual is a Nonresident Alien, then a **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding, is used to report payments made. Unlike the requirements for Forms W-2G and 1099, there is no dollar threshold for withholding or reporting purposes. Therefore, any gambling winnings or other payments made to a nonresident alien must be reported and taxes must be withheld. The withholding rate on nonresident aliens is generally 30 percent, unless the foreign country has a treaty with the U.S. for a lower rate.

Nonresident aliens may claim a lower withholding under a treaty, if applicable, by filing **Form W-8BEN**, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. Refer to **Publication 901**, U.S. Tax Treaties and **Publication 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities. The Form W-8BEN is used to receive a reduced rate or an exemption from withholding, as a resident from a tax treaty country, **but a winner still needs to provide a U.S. Taxpayer Identification Number to receive this treatment.** If a winner is from a treaty country, but he does not have a U.S. Taxpayer Identification Number, then withhold at 30% on **Form 1042-S**.

**Exception** – Winnings from certain games are exempt from taxation. No tax is imposed on, and no reporting is required for, gambling income of a nonresident alien playing traditional blackjack, baccarat, craps, roulette, and big-6 wheel games in the United States.

### **Failure to Pay Withholding Tax**

A tribal gaming operation is responsible for paying to the IRS the amount of regular gambling withholding or backup withholding due, *whether or not it collects the withholding from the prize recipient. The best time to collect withholding or backup withholding is before it is paid out as the prize.*

**Example:** Jack purchased a \$1 ticket for a raffle conducted by a tribal gaming operation. On October 31, the drawing was held and Jack won \$6,000. Since the proceeds from the wager are greater than \$5,000 (\$6,000 minus the \$1 cost of the ticket), the tribe must withhold \$1,499.75 (\$6,000 prize-\$1 wager X 25%). Jack receives \$4,500.25 cash. If the tribe fails to withhold, it will be liable for the tax.

**What if the tribal casino pays the tax as a part of the prize?** If a tribal casino, as part of a prize, pays the federal tax required to be withheld without deducting the taxes from the prize, the prize is deemed to include the amount of the federal tax paid by the tribal casino. On Form W-2G, the amount of tax paid by the tribal casino is shown in the box for federal income tax withheld, and is also added to the amount of the winnings. The following chart illustrates the applicable withholding and backup withholding rates.

<i>Tax Year Effective Date</i>	<i>Withholding Rate/Percentage</i>	<i>Backup Withholding Rate/Percentage</i>
2005/current	33.33%	38.89%

## Gaming Withholding and Reporting Threshold — Forms Needed

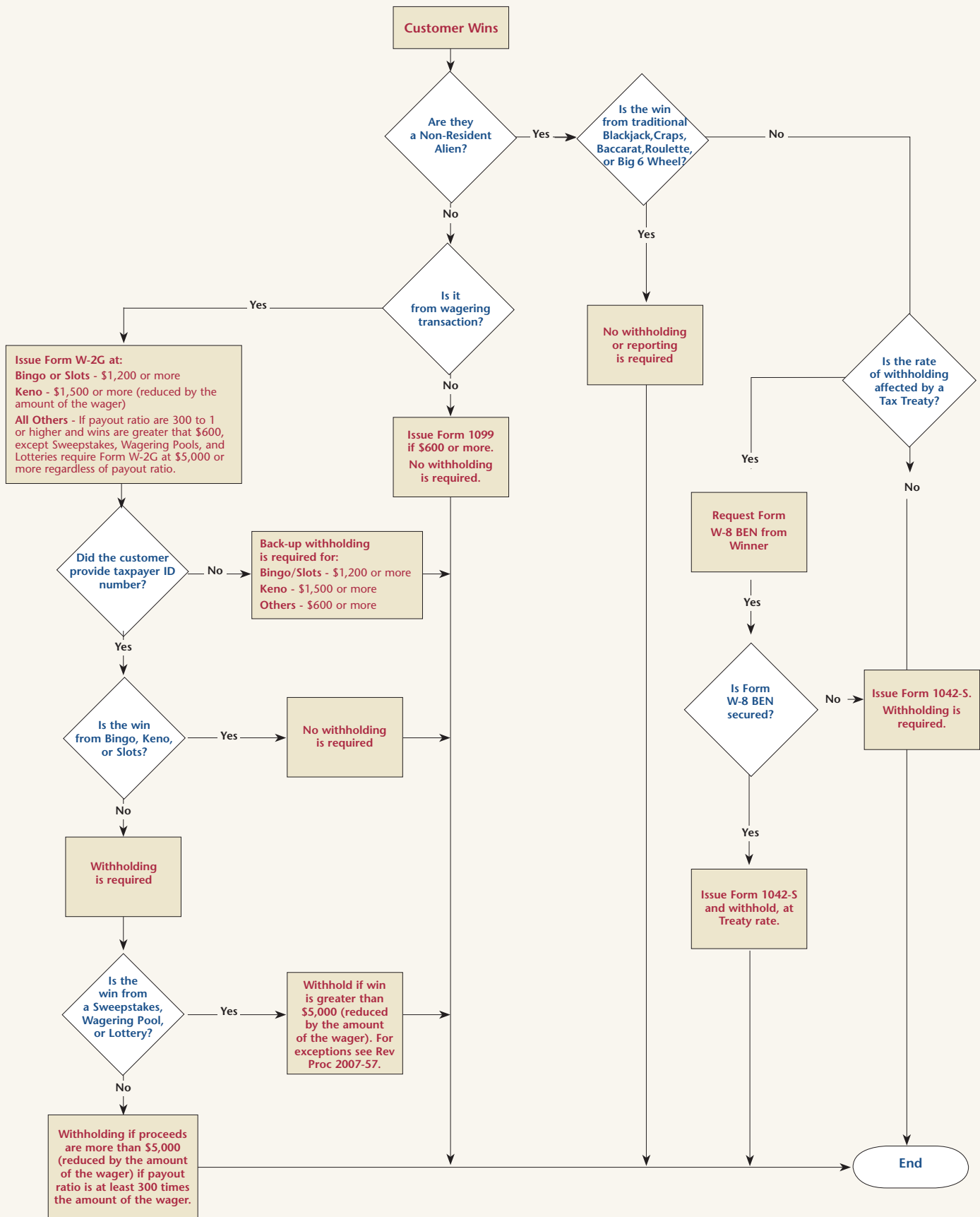
<i>Game</i>	<i>Form 1099 Required</i>	<i>Form W-2G Proceeds Not Reduced by Wager</i>	<i>Form W-2G Proceeds Reduced by Wager</i>	<i>Form W-2G Withholding Required (1)</i>	<i>Form 1042-S Foreign Payouts Verifiable Payments(2)</i>	<i>Excise Tax (Based on the Wager)</i>
Slot Win (slot tournaments with entry fee)		\$1,200			Yes	No
Bingo Win (Bingo Tournaments with entry fee)		\$1,200			Yes	No
Keno Win (1-20 games)			\$1,500		Yes	No
Keno Win (over 20 games)			\$1,500		Yes	Yes
Sweepstakes, Lotteries, Wagering pools (proceeds more than 300 times the amount wagered)			\$ 600		Yes	Yes (State conducted lotteries are exempt)
Sweepstakes, Lotteries, Wagering pools. Withholding required regardless of payout ratio				\$5,000	Yes	Yes (State conducted lotteries are exempt)
Wagering transactions with proceeds more than 300 times the amount wagered			\$ 600	\$5,000	Yes	No
Tournament – no entry fee	\$ 600				Yes	No
Tournament – with entry fee (3) & (4)						
Pari-mutuel, including horseracing, dog racing, and jai alai with proceeds more than 300 times the amount wagered			\$ 600	\$5,000	Yes	No
Prizes received with no wager (Drawings, Promotions, Bad Beat Poker, etc.)	\$600				Yes	No
Sports event or contest (only reportable if proceeds exceed 300 times the wager)			\$ 600	\$5,000	Yes	Yes
Pull-tabs			\$600	\$5,000	Yes	Yes (5)

Note:

- (1) Winnings must be reduced by the amount wagered and the proceeds must exceed \$5,000.
- (2) Payments made to non-resident aliens are subject to withholding and reporting on Form 1042-S (Proceeds from traditional blackjack, craps, roulette, baccarat, or big wheel 6 are exempt from withholding and reporting.)
- (3) See Revenue Procedure 2007-57 for poker tournament filing and withholding requirements.
- (4) For tournaments other than poker tournaments, entry fees must be analyzed to see if the entry fee is a wager, and if the proceeds exceed the wager by 300 times or more, or if the tournament is a wagering pool.
- (5) Electronic (coin-operated) Pull-Tabs are not subject to the gaming excise tax.

Regs. Sec. 7.6041-1 provides that Form W-2G shall be issued for slot machine and bingo wins of \$1,200 or greater, and for keno wins of \$1,500 or greater. For keno, the winnings from one game shall be reduced by the amount wagered in one game.

## Gaming Guidelines – When to Withhold and Report Gaming Wins





## Resources and Assistance

**Tax Information Materials** – The IRS has free tax law publications, forms, and annual reporting instructions that cover specific topics that fall under the gaming law umbrella. Some of the more popular publications and forms follow:

Publication 15 - *Circular E, Employer's Tax Guide*

Publication 15A - *Employer's Supplemental Tax Guide*

Publication 509 - *Tax Calendars*

Publication 510 - *Excise Taxes*

Publication 515 - *Withholding of Tax on Nonresident Aliens and Foreign Corporations*

Publication 531 - *Reporting Tip Income*

Publication 966 - *Electronic Federal Tax Payment System (EFTPS)*

Publication 1771- *Charitable Contributions - Substantiation & Disclosure Requirements*

Publication 3609 - *Filing information Returns Electronically System (FIRE)*

Publication 4132 - *EFTPS Marketing*

Publication 4048 - *FIRE Special IRS Penalty Refund Offer*

### **Annual Instructions for:**

Forms 1099, 1098, 5498 and W-2G

Form 8027

Form 1042-S

Most publications, forms, and a variety of tax-related information can be downloaded through the IRS Web site at [www.irs.gov](http://www.irs.gov). Publications and forms can be ordered free through the IRS at (800) 829-3676.

## 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](mailto:tege.itg.schemes@irs.gov)

**Customer Service Assistance** – Visit Indian Tribal Governments Web site for tribal tax law information, call toll-free for assistance, or write to our office with your questions.

- [www.irs.gov/tribes](http://www.irs.gov/tribes)
- (877) 829-5500
- Internal Revenue Service  
Indian Tribal Governments T:GE:ITG  
1111 Constitution Avenue, NW  
Washington, DC 20224

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Is this product helpful?

Yes  No

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Suggestions:

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Washington, DC 20224

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Stamp  
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Department of the Treasury  
**Internal Revenue Service**

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Publication 3908 (Rev. 8-2008)  
Catalog Number 32755Y

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