



# ITG News

Indian Tribal Governments



Keeping First Nations Informed

October 2008

Publication 4267B

Catalog Number 37829B

Oklahoma Edition

## Message from the Director

All of us are faced with increasing burden in our jobs and in our lives. Just when we are certain we cannot absorb any more complexities in our work responsibilities, a new rule is issued, an existing procedure is complicated, or a new law changes the paradigm under which we have operated.

In response to this problem, the IRS created the office of Taxpayer Burden Reduction. This function seeks methods to streamline procedures in order to assist taxpayers in meeting their federal tax obligations by finding methods to reduce the time required to comply, decrease the number of forms or line items to be completed, or simplify letters and instructions. The creation of Form 944, the Employer's ANNUAL Federal Tax Return, resulted from work performed by the office of Taxpayer Burden Reduction. Although the number of tribal entities eligible to file this annual form is very small, the number of entities that benefit on a national basis is significant.

The office of Taxpayer Burden Reduction recently announced the overhaul of the process for correcting errors on Employment Tax returns, a problem commonly faced by tribal entities. The new process, which is scheduled to be effective on January 1, 2009 is outlined on pages 2 and 3 of this newsletter. However, as with all new procedures, I encourage tribes to contact their designated ITG Specialist if they encounter a need to avail themselves of the new correction procedures, or if they have any questions about the process.

Speaking of change, three long-time ITG Specialists have opted to make a major change in their lives by electing to retire after many years of devoted government service. My appreciation to Bill Barker from the Spokane office, Rick Ziton from the St. Paul office, and Emily Williamson from the San Diego office. As with all departures, we have reassigned the primary ITG contacts for tribes who dealt with these three individuals. An updated listing is always available on our web site under the "Contacting ITG" link on the left side of the landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes).

Christie Jacobs



....Form 941X  
will reduce  
burden....

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## Form 941X to Debut

The IRS Office of Taxpayer Burden Reduction (TBR) initiated the Adjusted Employment Tax Returns (Forms 94X) Project to reduce burden associated with correcting information previously reported on various types of employment tax returns. Currently, employers and payers use one form – Form 941c, Supporting Statement to Correct Information – to correct the amounts they previously reported on Forms 941, 943, 944, and 945. Form 941c is not a stand-alone tax return. Presently, filers must attach Form 941c to their current employment tax return when making adjustments, or to Form 843 when claiming a refund of overpaid employment taxes.

Form 941c is complex and does not correspond directly to any employment tax return. Consequently, taxpayers often make mistakes completing and filing it, resulting in processing errors and delays. Additionally, because the taxpayer files Form 941c with the current employment tax return when making an adjustment, the IRS adjusts the tax for the current tax period but adjusts the wages for the calendar year being corrected. This makes it difficult for employers and the IRS to track taxpayers' account activity.

Commencing on January 1, 2009, a new set of dual-purpose forms for adjustments and refunds will reduce burden for employers, payers and the IRS. The IRS, with stakeholder input, is making the new forms as user-friendly as possible and implementing more accurate procedures for adjustments and refunds of employment taxes.

- **Forms:** Each stand-alone form will correspond to, and relate line-by-line with, the employment tax return it is correcting. For example, an employer who discovers an underpayment or overpayment error on a previously filed Form 941 will use Form 941X to make a correction. Since the Form 941X is a stand-alone form, the employer will be able to file Form 941X when an error is discovered, rather than having to wait to file it at the end of the quarter with the next employment tax return. The new forms being developed will correspond with Form 941, Employer's QUARTERLY Federal Tax Return; Form 943, Employer's Annual Federal Tax Return for Agricultural Employees; Form 944, Employer's ANNUAL Federal Tax Return; Form 945, Annual Return of Withheld Federal Income Tax and Form CT-1, Employer's Annual Railroad Retirement Tax Return. Spanish versions of the new forms are being developed for Forms 941-PR, 944-PR, and 944 (SP).

The IRS will also revise Form 941 and other employment tax returns for the 2009 tax year to eliminate prior period adjustment lines no longer needed after the implementation of the new forms. Note: Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, is not being revised. Employers can continue to use Form 940 to file amended returns.

- **Process:** Under the proposed regulations, Form 941X will be used to make adjustments and claim refunds. If an employer is correcting an overpayment for a Form 941, the employer will be able to either make an adjustment or claim a refund. If an adjustment is made the amount of the overpayment will be applied as a credit to the quarter in which the Form 941X is filed. Employers correcting underpayments of employment taxes that result in a balance due, can pay using EFTPS, credit card, or send a check along with Form 941X. The IRS will make both the tax and wage corrections to the actual tax period being corrected, resulting in a more accurate record.

As these new procedures are enacted, and/or you encounter the need to utilize them, we strongly encourage you to contact your designated ITG Specialist with any questions you may have.



## FREQUENTLY ASKED QUESTIONS

**Q. When I send in a Form 94X, do I need to attach it to anything, such as a copy of the form I filed originally?**

**A.** No, the new forms are stand-alone forms. You should not attach them to anything.

**Q. When should I file a Form 94X?**

**A.** Complete and file the form as soon as you discover you need to adjust a previously filed employment tax return.

**Q. Should I discontinue using Form 941c, Supporting Statement to Correct Information, to make corrections?**

**A.** Yes, for errors discovered after Dec. 31, 2008, use the new form that corresponds to the employment tax return you are correcting.

**Q. When are the new forms in the 94X series available?**

**A.** The new forms are available starting January 2009.

**Q. How will I know whether to make an adjustment or claim a refund?**

**A.** If you have an overpayment of tax, you have two choices. Either request an adjustment and have the amount credited to the tax period in which the adjustment form is filed, or claim a refund of the amount you overpaid.

**Q. What if I need to correct a previously filed Form 941 but I now file Form 944?**

**A.** Use the adjustment form that corresponds to the return you are correcting—in this case, Form 941X because you filed a Form 941 in 2008. If you have an overpayment and request an adjustment, any credit will be applied to the tax period in which you filed the

Form 941X. For example, if you file Form 941X in 2009 and your filing requirement in 2009 is Form 944, the credit will be applied to your 2009 Form 944 account.

**Q. What if my correction to the original return results in additional tax?**

**A.** If you owe additional tax as a result of a correction, you should pay with the Form 94X. You can pay via EFTPS or check. Credit card payments will also be accepted for Forms 941X, 943X and 945X.

**Q. Where can I get the new forms?**

**A.** You can download the forms starting in January 2009 from [www.irs.gov](http://www.irs.gov) or call 800-829-3676 to request copies by mail.

**Q. How can I reach the IRS if I have questions?**

**A.** Answers to most questions are in the forms' instructions and on [IRS.gov](http://IRS.gov). Visit [www.irs.gov/smallbiz](http://www.irs.gov/smallbiz) for small business tax information, or call the Business and Specialty help line at 800-829-4933 to speak with an IRS representative.

The Adjusted Employment Tax Forms Project is an IRS initiative led by the Office of Taxpayer Burden Reduction.

For more information, visit [www.irs.gov](http://www.irs.gov), Search TBR.

WWW.IRS.GOV



Department of the Treasury  
Internal Revenue Service

[www.irs.gov](http://www.irs.gov)

Publication 4876 (3-2008)  
Catalog Number 814680

INTERNAL REVENUE SERVICE

Office of Taxpayer  
Burden Reduction

EMPLOYMENT TAX  
ADJUSTMENT

OR

CLAIM FOR REFUND  
(FORMS 94X)



Internal  
Revenue  
Service

OFFICE OF TAXPAYER BURDEN REDUCTION

## MAKING CORRECTIONS TO EMPLOYMENT TAX RETURNS 2009 AND BEYOND

**NEW!** Employment tax returns now have corresponding forms for making corrections

Beginning Jan. 1, 2009, when you need to correct a previously filed employment tax return, use its corresponding form to make the change. The new 94X series of forms makes changes easy and accurate for employers and payers.

THE NEW 94X SERIES	
Correct the return you previously filed...	...using its corresponding 94X series form
Form 941, Employer's QUARTERLY Federal Tax Return	Form 941X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund
Form 943, Employer's Annual Federal Tax Return for Agricultural Employees	Form 943X, Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund
Form 944, Employer's ANNUAL Federal Tax Return	Form 944X, Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund
Form 945, Annual Return of Withheld Federal Income Tax	Form 945X, Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund
Form CT-1, Employer's Annual Railroad Retirement Tax Return	Form CT-1X, Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund

A simpler process reduces taxpayer burden

- **Timelier filing:** Employers and payers will file the appropriate form when they discover an error instead of waiting to file it with the next employment tax return. The new forms and process apply to errors discovered after Dec. 31, 2008.
- **Easier completion:** The new forms replace Form 941c, *Supporting Statement to Correct Information*, and each relates line by line to the employment tax return being corrected.
- **More accurate tax accounts:** The IRS will make both the wage and tax corrections to the tax period in which the error occurred.
- **One form with a dual purpose:** The new 94X series is for making adjustments or claiming refunds. Employers will no longer use Form 843, *Claim for Refund and Request for Abatement*, to claim a refund for overpaid employment taxes.



## Update on Customer Satisfaction Survey

Our appreciation to all those who participated in our annual Customer Satisfaction Survey. We had a record number of responses, which helps increase the validity of the data provided.

We are still in the process of tabulating the information, and will be issuing a report during the current quarter, which will be posted to our web site at [www.irs.gov/tribes](http://www.irs.gov/tribes). In addition, we will convene a task force of ITG employees to review the feedback and determine what changes we can make to better meet the needs of our tribal customers. We will also share that information on our web site when it is available.

## Consultation Listening Meetings for FY 2009

October marks the start of the new fiscal year for the federal government. Each fiscal year, ITG holds up to four Consultation Listening meeting across the country, and invites tribal leaders and representatives to dialogue with us on key federal tax issues of concern.

During the upcoming year we plan to hold meetings in December in Anchorage, in early February in Washington D.C. (in conjunction with the United South and Eastern Tribes), in the spring in Albuquerque, and in the summer in Tulsa. As we get closer to the date of each meeting, we will post a notice as the headline on our Internet landing page, issue an invitation letter to tribal leaders in the area of the meeting, and issue a Special Edition of ITG News in that area.

The Anchorage meeting will be held on December 4th at the Westmark Hotel. We hope that many individuals attending the BIA Providers Conference that week will be able to find time to attend.

All of the meetings are open to anyone, and we encourage attendance by all interested parties. Meetings held over the past three years have led to meaningful changes in IRS procedures, and also have allowed us to forward tribal concerns to other IRS functions and other federal agencies.

## Self-Assess Your Federal Tax Compliance Risks

Tribal entities can now self-assess their federal tax compliance and work with ITG to address any problems they uncover. Entities electing to participate receive a fillable template from ITG, and are provided with the name of a local ITG Specialist who will serve as their resource during the process.

Information on the program, as well as an on-line request form, is available through the "Self Assess Tribal Tax Compliance" link on the right-hand of the ITG web site landing page at [www.irs.gov/tribes](http://www.irs.gov/tribes), or you can make an inquiry about the program via e-mail to [tege.itg.tefac@irs.gov](mailto:tege.itg.tefac@irs.gov)

## Want to Avoid Penalties?

Are you incurring penalties? Do you want to eliminate penalties in the future? ITG has a "Helpful Hints to Avoid Penalties" job aid that can assist you. It's available by ordering our "Tax Tools for Tribes" CD-Rom via e-mail at [ITG.TaxTools@irs.gov](mailto:ITG.TaxTools@irs.gov).



## FinCEN Issues Guidance on Recognizing Suspicious Activity

On August 1, 2008, the Financial Crimes Enforcement Network (FinCEN) issued guidance via FIN-2008-G007. This guidance is intended to assist casinos and card clubs with the reporting of suspected money laundering, terrorist financing and related financial crimes. This guidance contains examples of circumstances or "red flags" - based on actual reports, the observations of examiners and the experience of law enforcement - that may indicate the presence of money laundering, terrorist financing, and related financial crimes.

The four page document can be accessed on-line at [www.fincen.gov](http://www.fincen.gov) . You can also obtain a copy by contacting your designated ITG Specialist.

Questions or comments regarding the contents of the guidance should be addressed to the FinCEN Regulatory Helpline at 800-949-2732.

## New FinCEN Form 103

Effective September 1, 2008, casinos and card clubs are required to file Currency Transaction Reports using a revised form. FinCEN announced in April that it was revising FinCEN Form 103, the Currency Transaction Report for Casinos and Card Clubs (CTR-C). This revision incorporates regulatory changes and accommodates database-programming requirements.

Additionally, FinCEN has issued revised specifications for casinos and card clubs who wish to electronically file (E-File) the revised form.

Questions regarding the revised form may be directed to the FinCEN Regulatory Helpline at 1-800-949-2732. Casinos and card clubs with questions regarding E-Filing of the new form should call the Bank Secrecy Act (BSA) E-Filing Helpline at 1-800-827-2778.

## 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)





## Costly Mistake - Failure to File Forms 1099-MISC

Failure to file information returns, Forms 1099-MISC Miscellaneous Income, may result in not only an assessment of civil penalties of \$100 for each missing Form 1099-MISC, but also in a substantial underpayment of backup withholding at the rate of 28% of the amount paid for tax years after 2002. For example, if a tribal entity has failed to issue 20 Forms 1099-MISC for payments totaling \$200,000 in tax year 2007, the total potential assessment would be **\$58,000** consisting of \$2,000 in civil penalties and \$56,000 in backup withholding taxes.

More entities may face this potentially costly issue since Indian Tribal Government resources will focus on ensuring that tribes are in compliance with both information reporting and withholding requirements on payments made to vendors and individuals. Knowledge of the law and a few simple steps will ensure compliance with the law for current and future years. Basic information and steps to follow on the most commonly encountered situations in making payments to non-employees are explained below:

### Reportable Payments Requiring Forms 1099-MISC (IRC sections 6041 & 6041A)

- In general all payments made by persons engaged in a trade or business and making payment in the course of such trade or business to another person in rents, services (including parts and materials), prizes and awards, other income payments, medical and health care payments, and legal payments of \$600 or more in any taxable year require a Form 1099-MISC for each recipient. These payments made by government agencies are also reportable. **(This includes Casinos making multiple prize payouts to the same individuals throughout the year. All prizes, promotions, and giveaways must be totaled to determine if an individual has reached the \$600 reporting threshold during the calendar year.)** Payments to individuals for POW WOW prizes for dancing, drumming, or singing must follow the same rules. Payments include the Fair Market Value of goods given in lieu of cash.
- Payments to corporations are not reportable unless they are for legal services or payments for services to medical and health providers.
- Forms 1099-MISC must be issued to the recipients by January 31st of the year following payment and to the IRS by the last day of February (March 31 if the returns are filed electronically) of the year following the payment.

*(Continued on page 7)*

## Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Suzanne Perry at (602) 207-8254.

## Tax Tools for Tribes

You can order our comprehensive reference CD-ROM containing Publication 4268 (Employment Tax Guide for Tribes), Publication 3908 (Gaming Tax Law for Indian Tribal Government), Publication 15 (Employer's Tax Guide), Publication 15-A (Employer's Supplemental Tax Guide), ITG News issuance for your area for the last 8 quarters, a "primer" for federal tax issues affecting individual Native Americans, and a guide on "Helpful Hints to Avoid Penalties".

E-Mail us at [ITG.TaxTools@irs.gov](mailto:ITG.TaxTools@irs.gov) and provide your mailing address and the number of CD-ROM copies you would like to receive.



*(continued from page 6)*

## **Secure Form W-9 Request for Taxpayer Identification Number and Certification**

- Before making any reportable payment to an individual or business entity, secure Form W-9 from that individual or entity. Note that as soon as the total payments to that individual or entity equal \$600 or more in a calendar year, the tribal entity has reached the threshold requiring that all payments made to that individual be reported on Form 1099-MISC at the end of the year.
- Keep all Forms W-9 in a central filing system, such as loose leaf binders, in alphabetical order. Please note that Form W-9 is only valid for U.S. citizens or residents or companies created in the United States. The Form W-9 is not valid for nonresident aliens and foreign entities.
- Upon receipt and review of the Forms W-9, code all accounts that are going to require a Form 1099-MISC at year end.

## **Backup Withholding (IRC section 3406)**

- If the payee fails to provide a Taxpayer Identification Number (Social Security Number, Employer Identification Number, or Individual Taxpayer Identification Number) the tribal entity must withhold 28% backup withholding from the payment.
- Backup withholding is reported on Form 945 Annual Return of Withheld Income Tax. Generally the deposit rules that apply to Form 941's Quarterly Tax Return also apply to the Form 945.
- If the tribal entity does not secure the Tax Identification Number and does not withhold the 28% backup withholding, the tribal entity becomes responsible for the backup withholding.

## **Failure to File Forms 1099-MISC**

- A civil penalty of \$50 is assessed for each failure to file Form 1099-MISC under IRC section 6721.
- A civil penalty of \$50 is assessed for each failure to furnish Form 1099-MISC under IRC section 6722.
- Backup withholding of 28% of the total unreported payments is assessed against the tribal entity. There is a potential relief provision for this tax. If the tribal entity can obtain a Form 4669 from the vendor in which the vendor attests that they have reported the income and paid the income tax on it, then the backup withholding tax can either not be assessed or can be refunded. The ITG Specialist will provide the tribal entity with Forms 4669, Statement of Payments, for each payee and Form 4670, Request for Relief from Payment of Income Tax Withholding. The vendor must provide all required information on Form 4669 in order for the tribal entity to secure relief from backup withholding under IRC section 3402(d).

## **Actions to Assist in Compliance**

- Provide clear written procedures designed to insure compliance with the reporting requirements. Implement internal controls to make sure the procedures are followed.
- Internal and/or external auditors should review all potentially reportable payments annually to insure all reportable payments are coded and reported appropriately.
- Consider performing a Self-Compliance check which will give the tribal entity the opportunity to effect any necessary actions and mitigate any penalties whenever possible.

## **Oklahoma Indian Tribal Government Specialists**

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# Federal Tax Calendar for Fourth Quarter 2008

## October 2008

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 * make a deposit for 9/24-9/26	2	3 * make a deposit for 9/27-9/30	4
5	6	7	8 * make a deposit for 10/1-10/3	9	10 * make a deposit for 10/4-10/7  Employees report September tip income to employers if \$20 or more	11
12	13	14	15	16 * make a deposit for 10/8-10/10 ** make a deposit for September if under the monthly deposit rule	17 * make a deposit for 10/11-10/14	18
19	20	21	22 * make a deposit for 10/15-10/17	23	24 * make a deposit for 10/18-10/21	25
26	27	28	29 * make a deposit for 10/22-10/24	30	31 * make a deposit for 10/25-10/28	

File Form 730 for  
wages received during  
September

File Form 941 the 3rd  
calendar quarter of  
2008

## November 2008

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5 * make a deposit for 10/29-10/31	6	7 * make a deposit for 11/1-11/4	8
9	10 Employees report October tip income to employers if \$20 or more	11	12	13 * make a deposit for 11/5-11/7	14 * make a deposit for 11/8-11/11	15
16	17 ** make a deposit for October if under the monthly deposit rule	18	19 * make a deposit for 11/12-11/14	20	21 * make a deposit for 11/15-11/18	22
23	24	25	26 * make a deposit for 11/19-11/21	27	28	29
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 must be initiated at least one day prior to the due dates listed above in order to be timely.





## December 2008

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 * make a deposit for 11/22-11/25	2	3 * make a deposit for 11/26-11/28	4	5 * make a deposit for 11/29-12/2	6
	8	9	10 * make a deposit for 12/3-12/5  Employees report November tip income to employers if \$20 or more	11	12 * make a deposit for 12/6-12/9	13
14	15 ** make a deposit for November if under the monthly deposit rule	16	17 * make a deposit for 12/10-12/12	18	19 * make a deposit for 12/13-12/16	20
21	22	23	24 * make a deposit for 12/17-12/19	25	26	27
28	29 * make a deposit for 12/20-12/23	30	31 * make a deposit for 12/24-12/26			

Form 730 for wagers  
received during  
October

File Form 730 for  
wagers received  
during November

\* = 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 must be initiated at least one day prior to the due dates listed above in order to be timely.

### Return Filing Dates

**October 31st**

- > File Form 941 for the 3rd quarter of 2008. If all deposits were paid on time and in full, file by November 10th.
- > File Form 730 and pay the tax on applicable wagers accepted during September.

**December 1st**

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

**December 31st**

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