

INTERNAL REVENUE SERVICE  
TAX EXEMPT AND GOVERNMENT ENTITIES  
Indian Tribal Governments

# Gaming Tax Law

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

## 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 ordered free through the IRS at (800) 829-3676 or downloaded through the IRS Web site at [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), or contact the Indian Tribal Governments (ITG) specialist in your area (listing on back cover) for further information on gaming tax law. Call (877) 829-5500 for Customer Account Services.

## 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 12.

### **Bank Secrecy Act (BSA), Title 31 (Casinos and Card Rooms) –**

In 1970, Congress enacted the Bank Secrecy Act. This far-reaching act instituted rules and regulations for the reporting of currency transactions of greater than \$10,000 and for certain identification and recordkeeping requirements. The Act was amended in 1985 to include casinos with gross annual gaming revenue in excess of \$1,000,000. This coverage was extended to Indian casino operations in August 1996.

Due to the cash intensive nature of gaming activity and the huge volume of wagering throughout the United States, casinos find themselves dealing with large numbers of individuals and massive amounts of currency.





## Requirements

Casinos and card rooms are designated as financial institutions subject to the requirements of the BSA if the property is licensed as a casino by state, local, or tribal governments; and if the property has gross annual gaming revenues in excess of \$1,000,000.

## Reporting

IRS Form 8362, *Currency Transaction Report by Casinos (CTRC)*, is used to report transactions. This form must be filed with the IRS Detroit Computing Center within 15 days of the date of the currency transaction. (Address noted on Form 8362.)

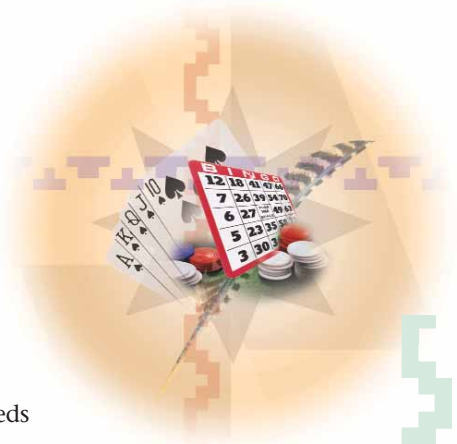
A report is required for a *single* or *multiple transaction* over \$10,000 by an individual. A single transaction is a transaction of more than \$10,000 in currency occurring at one location at one time. A multiple transaction is a series of transactions each less than \$10,000, which, when aggregated, exceeds \$10,000 during the gaming day. (A gaming day is defined as the normal business day of a casino. For a casino that offers 24-hour gaming, the term means that 24-hour period by which the casino keeps its books and records for business, accounting, and tax purposes. For purposes of Title 31 regulations, each casino may only have one gaming day, common to all of its divisions.) The casino must have knowledge that a multiple transaction exceeded \$10,000 in a gaming day and are by, or on behalf of, one individual. The casino is deemed to have knowledge if any employee, proprietor, officer, director or partner has knowledge the transactions occurred. It is not necessary to have personally observed the transactions; it can also be acquired from examining books, records, logs, computer files, etc.

**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 an additional \$5,000 in chips with cash. 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 CTRC, the casino is required to secure certain information from the customer (including foreign nationals) BEFORE concluding the transaction. The information includes: name and accurate address; account number (with the casino, if applicable); and social security number. This information must be verified using appropriate forms of identification: driver's license; documents acceptable within the banking community (including credit card); passport or other form of non-resident alien identification. This information must be documented on the CTRC.

Currency transactions in other operational aspects of a casino complex *may be* subject to other reporting requirements.

- IRS Form 4789, *Currency Transaction Report*, is used by independent check cashers, money remitters, wire transfer companies, etc., operating inside or outside of a casino.
- IRS Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, is used by hotels, retail outlets, and other establishments.



### Recordkeeping

There are extensive requirements for financial institutions, and additional ones for casinos. For casinos, important requirements concern deposit of funds, accounts opened, or credit extended. The casino must secure and maintain the name, permanent address, and social security number (SSN) for each person having a financial interest in the account. The information must be verified by examining a driver's license or any other form of identification that is acceptable within the banking community for cashing checks of non-depositors. In the case of an alien or non-resident of the United States, verification must be made by using a passport, alien identification card, or other official document corroborating nationality or residency. Other key records include:

- credit transactions greater than \$2,500
- records used to monitor customers gaming activity, i.e., player rating
- list of transactions involving monetary instruments of \$3,000 and greater
- records of wire transfers involving funds of \$3,000 or more
- copy of a casino's written compliance program
- computerized transaction records of casinos with automated recordkeeping systems

### Compliance Programs

Casinos are required to develop and implement a reasonably designed, written program to monitor compliance with the BSA. At a minimum the plan must include:

- a system of internal controls to assure ongoing compliance
- internal and/or external, independent testing of compliance
- training of casino personnel in BSA requirements
- an individual or individuals to assure day-to-day compliance
- procedures for using all available information to determine, when required: accurate customer identity; suspicious or unusual activity; and whether recordkeeping requirements are met

For casinos with automated systems, the casino must use the programs to aid in assuring compliance.

### Suspicious Transactions

Casinos have a certain vulnerability to potential money laundering schemes caused by the cash intensive nature of the games. The BSA was designed to create an audit trail to help minimize illicit financial transactions. Effective March 25, 2003 casinos and card clubs are required to report transactions of at least \$5,000 when the casino knows, suspects, or has reason to suspect that transactions:

- involve funds derived from illegal activity or used for illegal purposes;
- are intended to evade the requirements of the BSA;



- appear to serve no business or apparent lawful purpose; and
- involve the use of the casino to facilitate criminal activity.

Financial Crimes Enforcement Network (FinCEN) Form 102, *Suspicious Activity Report by Casinos and Card Clubs* is used to report suspicious activity.

The following are examples of how, under particular facts and circumstances, an activity may appear suspicious.

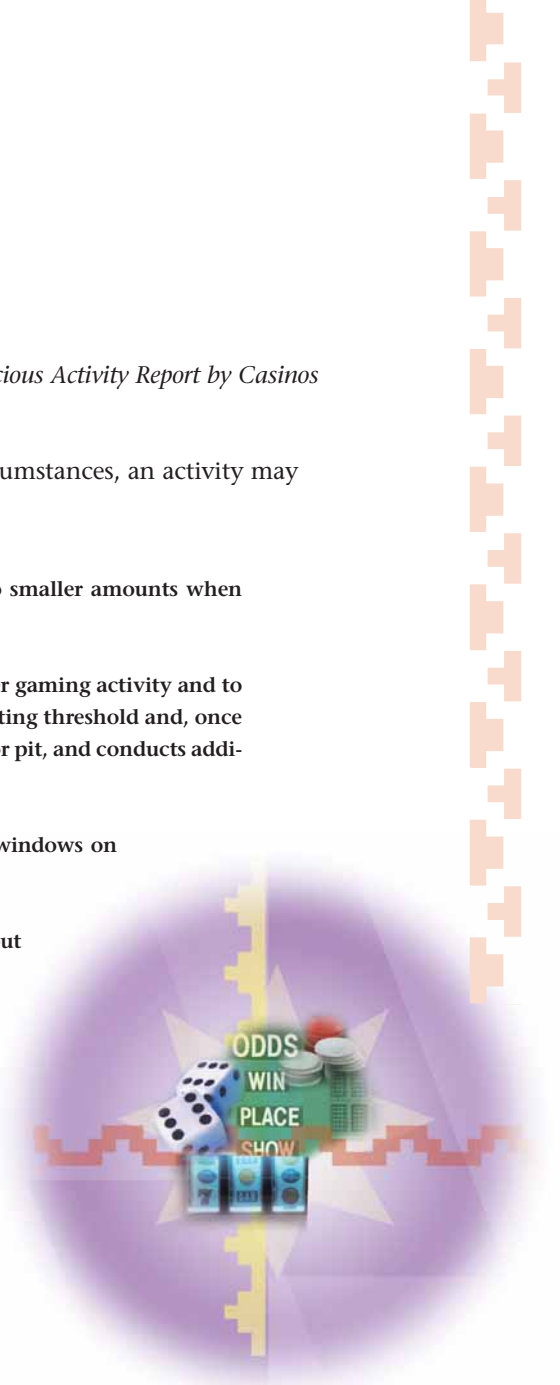
**Example 1:** Employees may break down currency transactions into smaller amounts when recording the transactions.

**Example 2:** Customers may ask a casino employee to monitor his/her gaming activity and to notify him when such activity is close to reaching the \$10,000 reporting threshold and, once notified, concludes gaming at that location, moves to another table or pit, and conducts additional currency transactions.

**Example 3:** Customers may conduct transactions at different cash windows on different shifts.

**Example 4:** Customers may enlist others to conduct large pay-out transactions.

Additional information regarding suspicious activity reporting requirements and copies of FinCEN Form 102, *Suspicious Activity Report by Casinos and Card Clubs* can be obtained through the Financial Crimes Enforcement Network's Web site at [www.fincen.gov](http://www.fincen.gov).



## Employment Tax

Tribal gaming operations are subject to employment tax 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 tax is tax imposed under Federal Insurance Contributions Act (FICA) and federal income tax withholding.

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 members 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 applica-

ble. See IRS Publication 15, *Circular E, Employer's Tax Guide*, for information regarding FUTA tax filing and deposit requirements.

**IRS Forms to File (for Compensated Workers)** – 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 tribal council members for services performed by them as council members. While these amounts should be included in the council members’ gross income, they do not constitute wages for purposes of FICA and federal income tax withholding.

Compensated workers, *workers treated as employees* and *workers not treated as employees*, are generally involved in gaming operations, and the gaming operation is responsible for filing certain IRS tax forms.

**Workers Treated As Employees**

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.
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.

### Workers Not Treated As Employees (Independent Contractors, Vendors)

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 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.

**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 only works for 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 should be treated as an employee, and the tribe should withhold income tax and employment tax.

The individual who performs services should complete IRS Form W-9, *Request for Taxpayer Identification Number and Certification*, certifying the correct taxpayer identification number (TIN) and name, and whether the provider is incorporated, before services are provided. Form W-9 is used to request payees to furnish a TIN and to certify that the number is correct (certification).

**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. The employer may designate which categories of employees will be covered by a TRDA, and which ones will not.
- **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 2003-35 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.

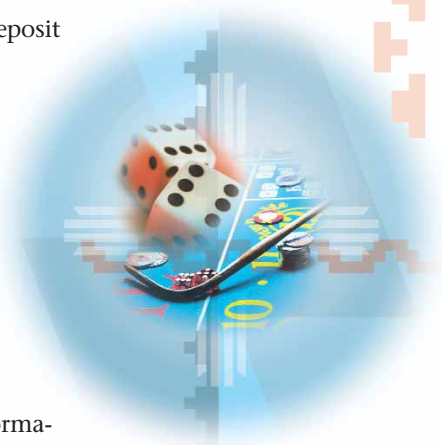
**Depositing Employment Tax** – In general, you must deposit backup withholding, gambling withholding, income tax withheld, and both the employer and employee Social Security and Medicare taxes. In order to deposit, you must use, either, the Electronic Federal Tax Payment System (EFTPS) or IRS Form 8109, *Federal Tax Deposit Coupon*.

### Federal Tax Deposit Coupon

Use Form 8109 to deposit employment tax and all other types of tax that are deposited to an authorized financial institution. Special rules apply:

- Do *not* use a deposit coupon to pay delinquent tax that has been assessed by the IRS. This payment should be sent directly to your area IR Service Center along with a copy of any related notice the IRS sent you.

- Separate deposits are required for IRS Form 945, *Annual Return of Withheld Federal Income Tax*, and IRS Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, withholdings. Do *not* combine deposits for Form 941, Form 945, and Form 1042 withholding liabilities. Be sure to mark the appropriate check box for Form 945 on Form 8109.
- The IRS will send you a coupon book after you apply for an employer identification number (EIN). Coupons will be preprinted with your name, address, and EIN. Use the entry boxes to indicate the type of tax and the tax period against which the deposit is to be applied.
- 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 semi-weekly-schedule depositor. See IRS Publication 15 for more information.
- Monthly depositors must deposit federal tax related to wage payments made during the current month by the 15th day of the following month. Semi-weekly depositors must deposit more frequently. In addition, there are a number of other rules that can affect your deposit schedule or when you must make deposits. You should consult Publication 15 for more information regarding deposit deadlines.



It is very important to clearly mark the correct *type of tax* and *tax period* on each deposit coupon. The IRS uses this information to credit your account.

Deliver each deposit coupon and a single payment covering the taxes to be deposited to an authorized financial institution. Follow the instructions in the front of the coupon book. Make the check or money order payable to the financial institution where you make your deposit. To help ensure proper crediting of your account, include your *EIN*, the *type of tax* (e.g. Form 941), and *tax period* to which the payment applies on your check or money order.

If your total liability will be less than \$2,500 for any return period, deposits are not required, and the payment may be made with the return. However, if you are unsure your liability will be less than \$2,500, make deposits on a monthly schedule to avoid failure to deposit penalties.

### **Electronic Federal Tax Payment System (EFTPS)**

You can initiate federal tax payments electronically instead of using paper coupons through EFTPS. Some taxpayers are required to use EFTPS to deposit tax, but many voluntarily use EFTPS because of its many advantages. EFTPS offers the convenience of making federal tax payments 24 hours a day, 7 days a week by telephone, on-line, and through the transfer of funds offered by your financial insti-

tution. No special equipment is required to use EFTPS. For PC use, free Windows®-based software is available when you enroll in EFTPS and use EFTPS-Direct. Also, you can view EFTPS-On-Line at [www.eftps.gov](http://www.eftps.gov). This new option allows you to pay federal tax via the Internet.

To determine whether you are required to use EFTPS, you must look back to your deposits in the previous year. If you deposited more than \$200,000 of certain types of federal tax in the previous year, you must use EFTPS to deposit tax for all return periods that begin in the following year and all succeeding years.

**Example:** A taxpayer that exceeds the \$200,000 deposit threshold during 2001 is required to make deposits through EFTPS for return periods beginning in or after 2003.

Again, once you are required to make deposits through EFTPS, you are required to use EFTPS for all succeeding years, regardless of whether your deposits exceed or fall below the \$200,000 threshold. The types of tax that count against the \$200,000 threshold include, but are not limited to, employment tax, tax withheld under backup withholding, and amounts withheld related to gambling winnings.

To participate in EFTPS, you must first enroll. To receive an enrollment form, call (800) 945-8400 or (800) 555-4477.

For further information on withholding and depositing tax, see IRS Publication 15, *Circular E, Employer's Tax Guide*.

**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 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.

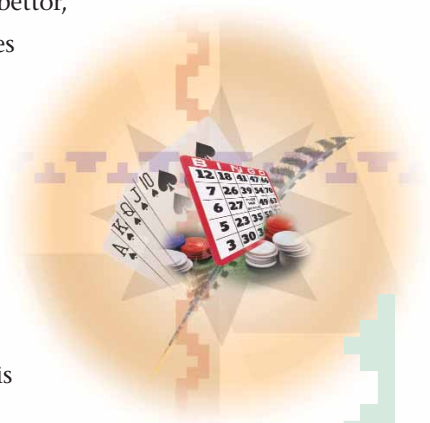
There are two types of wagering tax: wagering tax imposed on the amount of a wager; and an occupational tax imposed on persons engaged in receiving taxable wagers.

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, then IRS Form SS-4, *Application for Employer Identification Number*, must be completed and attached to Form 11-C when the form is filed. See the instructions for Form 11-C for additional information. An organization may be subject to a penalty for failure to file the form and for failure to pay the tax.

**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.

## Per Capita Distributions (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 are not taxable. Although there is no express statutory exclusion for a welfare benefit, government disbursements promoting the general welfare of a tribe are not 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 establish “need.” For information on these specific issues, contact the Indian Tribal Governments specialist in your area.

**Reporting Requirements of Per Capita 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.

**Withholding Requirements of Distributions from Net Gaming Revenue** – Identifying the initial source of funds used for the per capita distribution is an important aspect of reporting requirements. Unless specifically exempt from taxation, the amounts that make up the per capita distributions are taxable and subject to the requirements of filing IRS Form 1099-MISC, *Statement for Recipients of Miscellaneous Income*. A per capita 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, 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 tribe owns a casino, and in December, pursuant to an approved Tribal Revenue Allocation Plan, makes a \$15,000 per capita distribution to each member of the tribe. The tribe must:

- 1.** withhold an appropriate amount of tax from the distribution pursuant to the withholding tables for withholding on distributions of Indian gaming profits to tribal members found in Publication 15-A;
- 2.** prepare Form 1099-MISC for each tribal member receiving a distribution, with the \$15,000 reflected in box 3 and the amount withheld reflected in box 4;
- 3.** prepare and file Form 8109, *Federal Tax Deposit Coupon*. For the year 2000, a tribe would have been on a monthly deposit schedule if their total tax reported in the four quarters ending on June 30, 1999, was \$50,000 or less. If the total tax exceeded \$50,000, the tribe would have been on a semi-weekly schedule for deposits. Other factors could affect a tribe’s deposit schedule, and the tribe may have been required to make electronic deposits if the federal tax deposits were more than \$200,000. See Publication 15 for more detailed information.

4. prepare Form 945, *Annual Return of Withheld Federal Income Tax*, and file it before January 31st of the subsequent year. The total amount of withheld taxes from Indian Gaming Profits should be reported on line 1. If all taxes have been deposited timely, then Form 945 may be filed by February 10th in lieu of January 31st. See Publication 15 for more information.

A tribal member must prepare his/her IRS Form 1040, *U.S. Individual Income Tax Return*, and reflect the per capita distribution as "other income", and the total withheld taxes as federal income tax withheld from Forms W-2 and 1099-MISC.

## 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 945, <i>Annual Return of Withheld Federal Income Tax</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>	Upon winning only
Form 8027, <i>Employer's Information Return of Tip Income and Allocated Tips</i>	Annually
Form 8109, <i>Federal Tax Deposit Coupon</i>	Ongoing
Form 8362, <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.

## 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.

The winner must provide the game operator with proper identification, including his/her taxpayer identification number (TIN). Form W-9, *Request for Taxpayer Identification Number and Certification*, may be used to record the information.



**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 proper identification, along with his/her TIN, which is typically the taxpayer's social security number (SSN). The winner should furnish two types of identification (such as driver's license, social security card, voter registration card) to verify his or her name, address, and TIN. 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 22) 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 does not have to withhold.

**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 \$910 (\$1,300 gross winnings minus \$390 federal income tax withheld at the rate of 30 percent).

**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. 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 21, for more information on this topic.

\* Examples used throughout this publication reflect 2002 withholding rates.



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 \$650.

**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 30 percent of the winnings. The income tax withheld is reported on Form 945. The winner receives \$665 (\$950 gross winnings minus \$285 federal income tax withheld).

**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 \$3,715.70 (\$5,100 gross winnings less \$1,374.30 withholding tax). (Computed  $\$5,100 - \$10 \times 27$  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 must be prepared along with two Forms W-2G. Form W-2G should be completed for each of the winners (John Doe and Judy Smith) showing the gross winnings of \$600 each.

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 by magnetic media. Generally, if you are required to prepare and file 250 or more information returns, you must file on magnetic media. The tribal gaming operation may wish to file electronically. (Note: If you are required to file on magnetic media, you may choose to file electronically instead. You may choose magnetic media or electronic filing even if you are not required to file on magnetic media). 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 on magnetic media, but you are not required to file Forms 1099-MISC on magnetic media.

Magnetic media reporting includes magnetic tape, tape cartridge, 3<sup>1</sup>/<sub>2</sub> and 5<sup>1</sup>/<sub>4</sub>-inch diskettes. See IRS Publication 1220, *Specifications for Filing Forms 1098, 1099, 5498, and W-2G Magnetically or Electronically*, detailed instructions, or contact your local Indian Tribal Governments specialist for assistance.

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.

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

### **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>
2003 thru 2004	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 report backup withholding. The following chart illustrates the backup withholding rates.

<i>Tax Year Effective Date</i>	<i>Rate/Percentage</i>
2003 thru 2004	28%

**Example 1:** A tribe owes a pull-tab prize of \$750 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 \$225 ( $\$750 \times 30$  percent) and pay the winner \$525 ( $\$750 - \$225$ ). 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 \$1,620 ( $\$6,000 \times 27$  percent) and pay the winner \$4,380 ( $\$6,000 - \$1,620$ ).

**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 to be withheld should be collected from the prize winner. See section on Failure to Pay Withholding Tax, on page 23.

**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-S, *Foreign Person's U.S. Source Income Subject to Withholding*, is used to report payments made to a nonresident alien. Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, is filed with Form 1042-S, to report withholding on payments made to a non-resident alien. Both forms are submitted together to the Internal Revenue Service in March of the year following the payment. Unlike the requirements for Form W-2G, there is no dollar threshold for withholding or reporting purposes. Therefore, any gambling winnings paid to a nonresident alien must be reported and taxes must be withheld on these winnings. The withholding rate on nonresident aliens is generally 30 percent, unless the foreign country has a treaty with the United States for a lower rate. Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*, or a substitute form containing a substantially similar statement provides information as to whether an individual is a nonresident alien individual, foreign entity, or exempt foreign person not subject to certain U.S. information return reporting or backup withholding rules.

**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 blackjack, baccarat, craps, roulette, and big-6 wheel games in the United States.

**Failure to Pay Withholding**

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 \$1,619.73 (\$5,999 x 27 percent) from Jack's winnings. If the tribe fails to withhold, it will be liable for the tax.

In the above example, if the tribe fails to withhold the \$1,619.73 before the prize is distributed, the tribe is liable for that amount.

**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>
2003 thru 2004	33.33%	38.89%

## Gaming Withholding and Reporting Threshold - Forms Needed

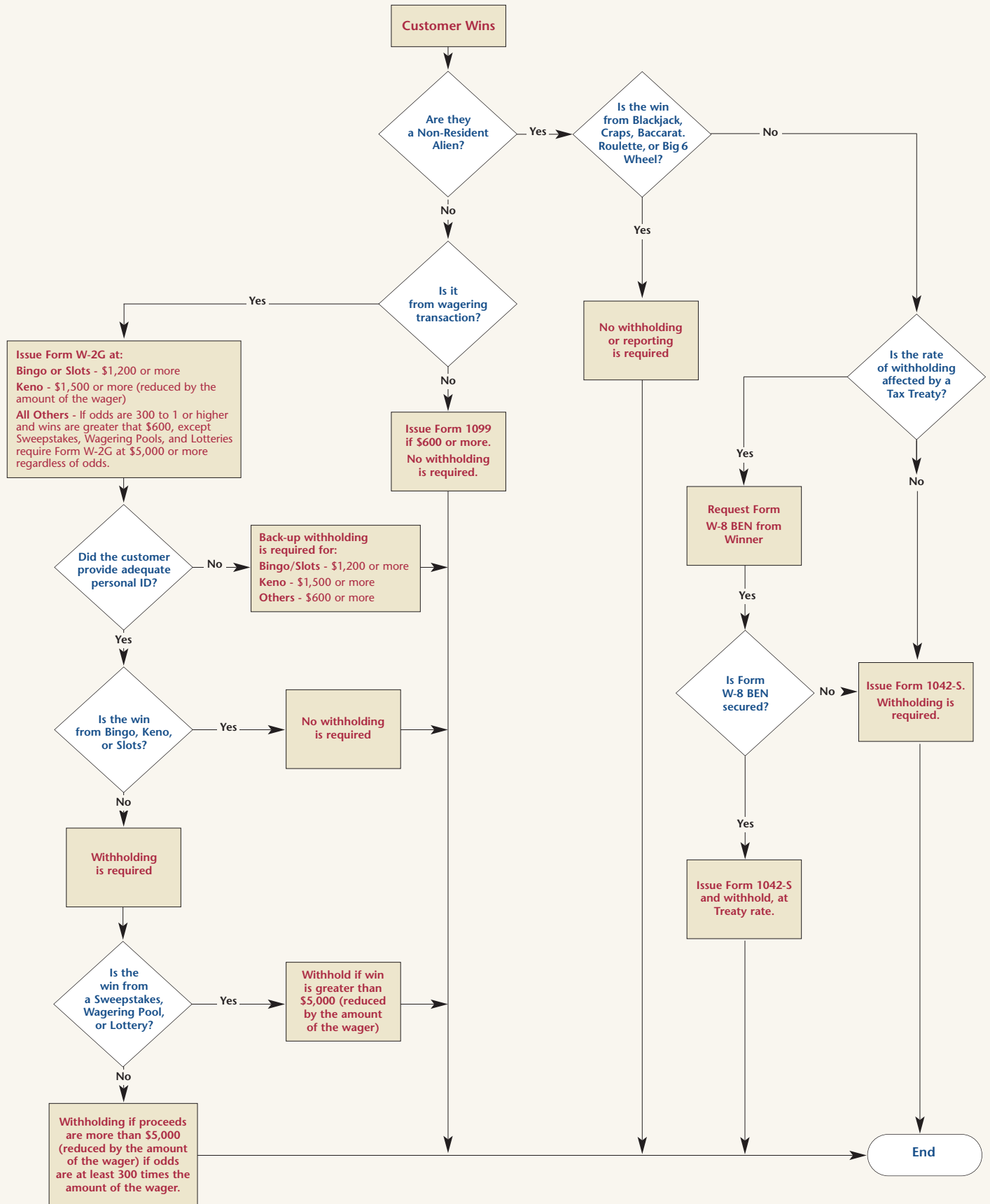
<i>Game</i>	<i>Form 1099 Required</i>	<i>Form W-2G Proceeds Not Reduced by Wager</i>	<i>Form W-2G Proceeds Reduced by Wager</i>	<i>Form W-2G Withholding Required (1)</i>	<i>Form 1042-S Foreign Payouts Verifiable Payments(2)</i>	<i>Excise Tax (Based on the Wager)</i>
Slot Win		\$1,200			Yes	No
Bingo Win		\$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 odds.				\$5,000	Yes	Yes (State conducted lotteries are exempt)
Wagering transaction 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)						
Pari-mutuel, including horse racing, 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, etc.)	\$600				Yes	No
Sports event or contest (only reportable if proceeds exceed 300 times the wager)			\$600	\$5,000	Yes	Yes

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 blackjack, craps, roulette, baccarat, or big wheel 6 are exempt from withholding and reporting.)
- (3) Tournaments with 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.



## 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 526 - *Charitable Contributions*

Publication 531 - *Reporting Tip Income*

Publication 535 - *Business Expenses*

Publication 578 - *Tax Information on Private Foundations and Foundation Managers*

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

### **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.

**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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**This is a new IRS information publication on Gaming Tax Law.**

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Is this product helpful?  Yes  No

Would you like to see this product again next year?  Yes  No

Suggestions:

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***First in service to America's first Nations***

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Internal Revenue Service  
Indian Tribal Governments  
T:GE:ITG:OPR 5th floor  
1111 Constitution Ave, NW  
Washington, DC 20224

Place  
Stamp  
Here

## ITG AREA CONTACTS

<i>Group Name</i>	<i>Manager</i>	<i>Contact</i>
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<b>North Central</b> <i>Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, Wyoming</i>	John Walters <i>Fargo, ND</i>	(701) 239-5400 Ext. 253
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**Internal Revenue Service**  
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