A photograph of a rugged, rocky mountain landscape under a clear sky, with a blue gradient overlay on the right side.

Gaming Tax Law and Bank Secrecy Act Issues

for Indian Tribal Governments



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SECTION I OVERVIEW

All tribal governments conducting or sponsoring gaming activities must understand and comply with federal requirements regarding income tax reporting, employment tax, and excise tax. The requirements apply, whether for one night out of the year or throughout the year, as well as whether in their primary place of operation or at remote sites.



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). It also includes 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. This 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 regarding gaming operations for these activities. You will learn about recordkeeping, employment tax, tax on wagering, per capita distributions, forms to file, and much more. You can download or order all IRS forms and publications referenced throughout this publication at www.irs.gov.

Visit the office of Indian Tribal Governments (ITG) website at www.irs.gov/tribes. For more information on gaming tax law, contact your [ITG Specialist](#). You can also contact the Indian Tribal Governments Field Group Manager in your area (see Section VII). For Customer Account Services call (877) 829-5500.

Federal Law and Regulations

[Indian Gaming Regulatory Act \(IGRA\) – 1988](#)

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.

Below are highlights:

- Provides a statutory basis for the regulation of Indian gaming to ensure tribes are the primary beneficiaries
- Establishes federal standards for Indian gaming
- Shields gaming from organized crime and other corrupting influences
- Ensures that gaming is conducted fairly and honestly by both the operators and the players.
- Provides a statutory basis for the operation of gaming by Indian tribes to promote tribal economic development, self sufficiency, and strong tribal governments
- Established the National Indian Gaming Commission (NIGC)
 - o Independent federal regulatory authority for Indian gaming
 - o Meets congressional concerns regarding Indian gaming and protects gaming as a means of generating tribal revenue

[Bank Secrecy Act \(BSA\), Title 31 of the Code of Federal Regulations](#)

Casinos are cash intensive businesses, which can offer a broad array of financial services, such as deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those provided by depository institutions and other financial firms. As such, casinos are vulnerable to abuse by money launderers and tax evaders.

Highlights include the following:

- Provides rules and regulations regarding reporting currency transactions greater than \$10,000
- Provides rules and regulations regarding identification and recordkeeping requirements
- Designed to create an audit trail to help minimize illicit financial transactions
- Amended in 1985 to cover casinos with gross annual gaming revenue exceeding \$1,000,000
- Coverage was extended to Indian casino operations in August 1996 and card clubs in August 1998.

[Section 352 of the USA PATRIOT Act of 2001](#)

This requires financial institutions to establish anti-money laundering programs. Casinos and card clubs comply with this requirement if they implement and maintain adequate programs for compliance with the Bank Secrecy Act. See the United States Code, Title 31, [Section 5318\(h\)](#).

Federal Agency Partners

[Department of the Interior/Bureau of Indian Affairs](#)

Through its relationships with the Bureau of Indian Affairs and the National Indian Gaming Commission, the Department of the Interior has approval responsibility related to various reservation and tribal issues. This includes overseeing revenue allocation plans associated with Indian gaming. The Bureau of Indian Affairs provides services directly or through contracts, grants, or compacts to the federally recognized tribes with a service population of about 1.9 million American Indian and Alaska Natives.

[National Indian Gaming Commission \(NIGC\)](#)

The Commission has oversight responsibility for Indian gaming. Its primary mission is to work within the framework created by the Indian Gaming Regulatory Act (IGRA) to regulate gaming activities tribes on Indian lands conduct.

These goals are:

- promoting tribal economic development, self-sufficiency and strong tribal governments;
- maintaining the integrity of the Indian gaming industry; and
- ensuring that tribes are the primary beneficiaries of their gaming activities.

[Financial Crimes Enforcement Network \(FinCEN\)](#)

The U.S. Department of the Treasury established the Financial Crimes Enforcement Network in 1990 to provide a government-wide multisource financial intelligence and analysis network. The organization's operation was broadened in 1994 to include regulatory responsibilities for administering the Bank Secrecy Act.

[Office of Foreign Assets Control \(OFAC\)](#)

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

Determining Federal Tax Status of Indian Tribal Governments

While the National Indian Gaming Commission (NIGC) is responsible for overseeing Indian gaming, the IRS has responsibility for federal taxation issues emanating from gaming. The IRS is also responsible for any other federal tax issues involving Indian tribal governments. Due to gaming compacts negotiated between the tribes and states other types of regulations exist that involve state oversight. Ultimately, the IRS is responsible for 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 received¹. 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.

SECTION II RECORD KEEPING AND REPORTING

The Tribe's Legal Responsibilities

Tribal governments that are conducting gaming operations deal with large numbers of individuals and currency. Therefore, tribal gaming operations should be actively involved in overseeing and controlling each facet of the gaming activity to ensure they do not divert funds 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 and annual gross gaming revenue is greater than \$1 million. Note: Class I gaming on Indian land is not subject to IGRA provisions.

¹Constructively received means you are generally taxed on income that is available to you, regardless of whether it is actually in your possession.

A wholly-owned Tribal gaming operation must follow NIGC's regulations outlined in the Minimum Internal Control Standards (MICS) for Indian gaming. MICS apply to all Tribal gaming operations regardless of whether a management company has been hired to run its gaming operation or the Tribal Government is directly overseeing gaming operations. Most Tribal gaming operations are formed through Tribal-State Gaming compacts. The compacts also contain MICS. These standards apply if they are more stringent than the IGRA MICS.

The NIGC regulations cover the internal controls needed for all Class II and Class III gaming operations. A tribe must also have an independent certified public accountant (CPA) verify that the internal control systems that are in place are compliant with either NIGC's or the Tribal-State compact Internal Control Standards, whichever standards are the most stringent. Failure to meet these standards may result in temporary closure and/or civil fines.

Bank Secrecy Act

Casino Definition

Bank Secrecy Act (BSA) requirements apply to casinos and card clubs and designate them as financial institutions if they meet the following conditions:

- State, local or tribal governments have licensed or authorized them to do business as casinos or card clubs in the United States.
- They have gross annual gaming revenues in excess of \$1,000,000.

See the Code of Federal Regulations, Title 31, Section 1010.100, (t)(5)(i) and (t)(6)(i).

Recordkeeping Requirements

Regardless whether the Tribe has hired a management company to run their gaming operation or is running the operation itself, it is ultimately responsible for the following:

- **Maintain all books and records used to determine gross and net income.**
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: A player cashes in a \$1 winning ticket for another ticket: \$1 must be included in gross receipts of the gaming operation, and \$1 is included in prizes awarded. The amounts cannot be "netted."
- **Determine information reporting responsibilities.**
Example 3: If the player does not have a SSN then determine if he or she is a foreign national subject to foreign withholding and Form 1042 and Form 1042S filing requirements.

The NIGC regulations require that the Tribe keeps its books and records of Class II or Class III operations for at least five years. Additionally, the Tribe must preserve its records for

- at least four years after the employment tax return's due date; or
- four years from the date it paid the tax - whichever is later.

Tribal-State compacts may contain additional recordkeeping and reporting requirements for tribal gaming operations. There are also special recordkeeping requirements for excise tax application. See Section V – Tax on Wagering.

The Bank Secrecy Act requires a casino or card club to maintain and retain the following records that relate to its operation:

- Transmitted funds
 - More than \$3,000
 - Must require identity verification
 - Must record and report to other financial institutions in the payment chain regardless of the method of payment
- Funds deposits, opened accounts, or extended lines of credit
 - Must include the customer's verified identification plus similar information for anyone else having a financial interest in the account regardless of residency
- Receipts showing transactions for or through each customer's deposit or credit account
 - Must include the customer's verified identification regardless of residency
- Bookkeeping entries containing a debit or credit to a deposit account or credit account
- Statements, ledger cards or other records of each deposit or credit account
 - Must show all transactions
- Credit extensions over \$2,500
 - Must include the customer's verified identification regardless of residency
- Requests, instructions or advice regarding any transactions involving people, accounts or places outside the United States
 - Must include the customer's verified identification regardless of residency
- Records prepared or received in the ordinary course of business that would be needed to reconstruct a customer's deposit or credit account
- Records required by other governmental agencies, e.g., federal, state, local or tribal
- Records prepared or used to monitor customers' gaming activity, e.g., player rating records, multiple transaction logs, etc.
- A list of transactions involving various types of instruments, cashed or disbursed, in face amounts of \$3,000 or more, regardless of whether currency is involved, including customer's name and address
- A copy of the casino's written compliance program

Additionally, card clubs must maintain and retain records of all customers' currency transactions, including, without limitation, records in the form of currency transaction logs and multiple currency transaction logs. If a casino or card club records, stores or retains any part of its records on any form of electronic media they must ensure that the data will be available and accessible for review in the same media. A casino or card club must retain the originals (or on microfilm) of all required records outlined by the Code of Federal Regulations, Title 31 - Chapter X for a period of five years. These records must in all events be filed or stored in such a way as to be accessible within a reasonable period of time. For more information regarding record retention, please see the Code of Federal Regulations, Title 31, Section 1010.41.

Anti-Money Laundering Compliance Programs (AML)

Section 352 of the USA PATRIOT Act of 2001 requires financial institutions to establish anti-money laundering programs. See the United States Code, Title 31, Section 5318(h). A casino or card club complies with this requirement if the casino or card club implements and maintains an adequate program for compliance with the Bank Secrecy Act. See the Code of Federal Regulations, Title 31 - Section 1021.210(a). Section 1021.210(b) contains the specific compliance program requirements. Casinos and card clubs must develop and implement a written program reasonably designed to assure and monitor compliance with the Bank Secrecy Act.

At a minimum, the program must include the following:

- A system of internal controls to assure ongoing compliance
- Bank Secrecy Act requirements training for personnel
- Designated individual(s) to assure day-to-day compliance
- If available, automated data processing systems to be used in assuring compliance.
- Internal and/or external independent testing for compliance with a scope and frequency commensurate with the risks of money laundering and terrorist financing, and the products and services provided
- Procedures for using all available information to determine and verify - when required - the person's name, address, social security or taxpayer identification number and other identifying information
- Procedures for using all available information to determine whether any suspicious transactions or patterns of transactions should be reported

For more information regarding the Bank Secrecy Act's Anti-Money Laundering compliance program requirements, see the [Code of Federal Regulations, Section 1021.210](#).

The Office of Foreign Assets Control (OFAC) is a separate office within the U.S. Treasury department. They also maintain requirements under their own compliance program for Anti-Money Laundering. For more information related to OFAC compliance programs see their FAQ section for [Questions from Financial Institutions](#), specifically [Question #30](#). In order to avoid penalties from this separate program, casinos and card clubs must additionally maintain a compliance program very similar to the Bank Secrecy Act's Anti-Money Laundering program.

Suspicious Transactions

The Bank Secrecy Act requires a casino or card club to file a suspicious activity report when it knows, suspects or has reason to suspect that a transaction or pattern of transactions is both suspicious and involves or aggregates to \$5,000 or more in funds or other assets. A transaction (conducted or attempted) is "suspicious" if the transaction:

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

See the Code of Federal Regulations, Title 31, [Section 1021.320](#).

Casinos and card clubs must use the Financial Crimes Enforcement Network [BSA E-Filing System](#), to report suspicious activity. A casino or card club must file this form within 30 calendar days after initial detection of the suspicious transaction. If the casino or card club does not identify the suspect on the date of detection, it may delay filing a suspicious activity report for an additional 30 calendar days to do so. However, a casino or card club must in all events report a suspicious transaction within 60 calendar days after the date of initial detection. The following examples demonstrate how, under particular facts and circumstances, an activity may appear suspicious:

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

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

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

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

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

Note: When using the FinCEN BSA E-Filing system a casino must use the legal name of the tribal casino. A tribal casino's legal name is found in the articles of incorporation or corporation charter. If the casino is an unincorporated entity of the tribe then the legal name is the tribe itself. It is important to make the distinction between the legal name and trade name of the casino.

The Financial Crimes Enforcement Network's (FinCEN) contains additional information regarding suspicious activity reporting requirements. Please review the Suspicious Activity Reporting Guidance for Casinos, which explains how to prepare a complete and sufficient "Narrative" and provides additional illustrative examples.

Structuring

Federal law prohibits a financial institution, including a casino or card club, to structure, attempt to structure, or assist in structuring transactions. Structuring pertains to conduct engaged in to evade a Bank Secrecy Act reporting or recordkeeping requirement. Structuring is unlawful under the Bank Secrecy Act and could render a person subject to both civil and criminal penalties. See the United States Code, Title 31, Sections 5321, 5322, and 5324; and the Code of Federal Regulations, Title 31, - Section 1010.314.

Currency Transaction Reporting

A casino or card club must file a report for each cash-in or cash-out currency transaction it handles that is more than \$10,000. It must aggregate multiple currency transactions – if the cash-in or cash-out amounts during a single gaming day totals more than \$10,000. It would treat the cash-in or cash-out transactions as a single transaction and as though conducted by or on behalf of the same person. It is not necessary to personally observe the multiple transactions. The books, records, logs, and computer files should contain the information showing that the reportable currency transactions occurred. See the Code of Federal Regulations, Title 31, Sections 1021.311 and 1021.313.

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 in chips with cash at another pit. Later, the customer asks to purchase from the dealer an additional \$5,000 in chips with cash that is approved by the floor person. The casino is required to file a CTR because a casino employee had knowledge that the customer had cash-in transactions in excess of \$10,000 in one gaming day.

When a winner's aggregate amount exceeds \$10,000, the casino or card club must report and file with FinCEN's BSA E-Filing System. To properly file the form, it must secure certain information from the customer (including foreign nationals) before concluding the transaction unless the transaction is identified through an "after the fact aggregation" process. During the "after the fact aggregation" process, the casino or card club is still required to file a completed form. It should obtain all the required information if available through internal records or systems examinations.

See the FinCEN Currency Transaction Report for instructions on how to complete the form. You can also review the Code of Federal Regulations, Title 31, [Section 1010.312](#) for the requirement to identify persons involved in currency transactions.

It is possible that multiple currency transactions may reach the threshold reporting requirements for FinCEN Currency Transaction Report without requiring Form W-2G reporting. Casinos and card clubs must have procedures in place to ensure accurate filing. An example would be multiple slot jackpots below \$1200 aggregating to more than \$10,000.

If a currency transaction exceeds \$10,000 and is suspicious, a casino or card club must file both a Currency Transaction Report (reporting the currency transaction) and a Suspicious Activity Report (reporting the suspicious aspects of the transaction). The casino or card club must transmit all completed FinCEN Forms electronically within 15 calendar days from the date of the transaction(s) through FinCEN's [BSA E-Filing System](#). For more information about suspicious transactions see page 6, Suspicious Transactions.

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

- Independent check cashers, money remitters, wire transfer companies, etc., operating inside or outside of a casino use a Currency Transaction Report.
- Casino nongaming activities such as hotels, retail outlets, and other establishments use [Form 8300, Report of Cash Payments Over \\$10,000 Received in a Trade or Business](#). Cash for Form 8300 reporting purposes includes coin, currency and cashier's checks, bank drafts, traveler's checks, or money orders received during a 12-month period.

Domestic and Foreign Vendors

A tribal gaming operation deals with vendors on a daily basis and there are filing and withholding issues related to this interaction. Domestic vendors generally provide Form W-9 to tribal gaming operations to avoid backup withholding when they are providing services. A best practice for tribal gaming operations is to require the W-9 prior to payment of invoices for services rendered. Tribal gaming operations may encounter instances where foreign vendors are used creating opportunities to ensure proper filing and withholding.

The backup withholding for failure to provide a TIN, discussed more completely in Section VI, applies to domestic vendors. It is important to note that vendors from foreign countries are not subject to backup withholding rules but instead, are subject to IRC Sec. 1441 foreign withholding rules. These rules are similar to the gaming withholding rules for non-resident aliens covered in Sec. VI. Foreign vendors with domestic operations should have an EIN and domestic address, which would allow Form W-9 submission. Generally speaking, Form W-8BEN is similarly used for foreign vendors.

There is no dollar threshold for withholding or reporting purposes related to Form 1042-S. Therefore, a tribal gaming operation must withhold taxes and report any payments paid to a nonresident vendor. The withholding rate on nonresident vendors is generally 30 percent, unless the foreign country has a treaty with the U.S. for a lower rate. You can use Form W-8BEN for status determination of nonresident vendors. Use Section 1 for identification. Nonresident vendors may claim a lower withholding rate under a treaty, if applicable, by preparing Section 2 of Form W-8BEN. However, a vendor still needs to provide a U.S. Taxpayer Identification Number to receive this

treatment. If a vendor is from a treaty country, but he does not have a U.S. Taxpayer Identification Number, then withhold at 30% on Form 1042-S. Refer to [Publication 901](#), U.S. Tax Treaties and [Publication 515](#), *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

Use [Form 1042](#), *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, for reporting payments made to nonresident aliens and required withholding.

File [Form 1042-T](#) with paper [Forms 1042-S](#), *Foreign Person's U.S. Source Income Subject to Withholding*. Submit all of these forms to the Internal Revenue Service by March 15 of the following year. You may voluntarily file electronically using the FIRE system.

If you file 250 or more Forms 1042-S during a year, then the tribal gaming operation must submit them electronically. Penalties may be assessed against a tribal gaming operator if the information shown on the Form 1042-S is incomplete or incorrect.

Failure to Pay Withholding Tax

A tribal gaming operation is responsible for paying to the IRS the amount of foreign withholding due, whether or not it collects the withholding from the recipient. The best time to collect foreign withholding is before it is paid out. Penalties are assessed for failure to deposit taxes withheld, failure to file a return on time, and failure to pay taxes on a return.

SECTION III DISTRIBUTIONS FROM GAMING REVENUE

Per Capita Payments

When a Tribe distributes revenue to all its members or identified groups of members, it has provided a per capita payment. Under IGRA, a federally recognized Indian tribe may use net revenues from Class II or Class III gaming activities to make per capita payments to its tribal members only if four conditions are met:

- It must prepare a plan to allocate revenues only for uses authorized under IGRA. These uses are to:
 - o fund tribal government operations or programs;
 - o provide for the general welfare of the Indian tribe and its members;
 - o promote tribal economic development;
 - o donate to charitable organizations; or
 - o fund local government and agency operations.
- The Secretary of the Interior must approve the revenue's use, particularly when it is for funding tribal government operations or programs and for promoting tribal economic development.
- The Tribe must protect and preserve minors' and other legally incompetent persons' interests who are entitled to receive any of the per capita payments. The Tribe disperses these payments to their parents or legal guardian for their health, education or welfare, under a plan approved by the Secretary and the Tribe's governing body.
- The per capita payments are subject to federal taxation and tribes notify members of such tax liability when payments are made.

Guidelines for Per Capita Distribution Plans

The Department of Interior issues guidelines to govern the review and approval of per capita distribution plans also known as revenue allocation plans (RAP). Tribal governments can make periodic or occasional distributions by ordinance or resolution in the absence of a RAP. These guidelines provide procedures how Tribes must submit for review and approval tribal revenue allocation plans or ordinances. These plans and ordinances contain information about how tribes distribute net revenue distributions that comes from a gaming activity. For approval, the allocation plan must provide enough detail indicating it complies with the guidelines and IGRA. The tribe must also provide a percentage breakdown regarding how it intends to use and allocate its net gaming revenues. 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.

Gaming Distributions to Minors

One of the IGRA requirements for gaming revenue distribution to tribal members requires protection of the minors' interests. To satisfy this requirement, many tribes establish trusts for minors and legal incompetents. IGRA establishes that a tribe may serve as the grantor and owner of the trust. See Revenue [Procedure 2011-56](#) for more information.

Revenue Procedure 2011-56 also clarifies that deposits into a trust are taxable at the time the deposits are made. If the funds are left in the trust account until the beneficiary reaches the age of majority the principal and interest are not reported as taxable income to the beneficiary. The Revenue Procedure states that when an IGRA trust earns money or receives a deposit, the beneficiaries are not required to include those amounts in their gross income. However, beneficiaries who receive trust distributions would include the amounts as taxable income when actually or constructively received².

Example: Jane, a minor, is a member of a federally recognized tribe. The tribe creates a trust for her. She cannot receive any distributions from the trust before reaching her eighteenth birthday. Therefore, Jane does not include the trust's income as part of her gross income. She is not in constructive receipt of the funds placed in trust or income earned by the trust, because she does not have the unqualified right to receive immediate payment. As a result, the accumulated per capita distributions and the related income are not taxable. However, if the tribe gives the trustee (Jane's legal guardian) approval to access the funds, then those funds become taxable.

Withholding Requirements of Distributions from Net Gaming Revenue

Per capita distributions from gaming are subject to federal taxation according to IRC 3402(r). Tribes must notify its members of the tax liability when it makes the payments, reporting the per capita distributions on Form 1099-MISC, Statement for Recipients of Miscellaneous Income. When the tribal members receive their Forms 1099-MISC, they report the income on the "Other Income" line of their Form 1040 and include a description as "Indian gaming profits." These distributions are also subject to withholding. The Social Security number of all payees should be secured prior to making payments. Otherwise, the tribe is potentially liable for backup withholding provisions pursuant to Internal Revenue Code [Section 3406](#). See Reporting and Withholding on page 26 for more information on this topic, including Form 945 filing requirements. In the payments section of Form 1040, the payee should report any withholding reflected on Form 1099 as "federal income tax withheld from Forms W-2 or 1099." The Tribe determines the withholding amount based on the total payment to the tribal member for the year. [IRS Publication 15-A, Employer's Supplemental Tax Guide](#), contains the withholding tables (Identified as "Tables for withholding on distributions of Indian gaming profits to tribal members"). The tribe is potentially liable for the difference between the amount required to be withheld pursuant to the tables and the amount actually withheld.

²When a beneficiary has the unqualified right to the funds in a trust, the beneficiary must include it as taxable income.

The withholding tables are revised each year and generally published in January. There is a threshold for requiring withholding which often changes annually. Once the threshold distribution amount is reached, withholding is required between 10 – 28 percent, subject to future revisions.

Example: A tribe distributes \$19,000 of per capita payments to tribal members during 2012. A regular monthly per capita payment of \$1,000 is issued during the months January through December. During December, an additional per capita payment is made of \$7,000, for a cumulative monthly distribution of \$8,000.

The computation for withholding on monthly per capita payments would be based on the \$1,000 monthly payment for January to November and for December, the aggregate payment amount of \$8,000. Using the tables for 2012 for monthly distributions, payments of \$1,000 are subject to 10 percent withholding or \$100. The December payment would be subject to \$1,453.50 plus 28 percent of the amount over \$7,950 or \$1,467.50 ($1,453.50 + 14 (28 \text{ percent} \times \$50 (\$8,000 - \$7,950))$)

To avoid incorrect withholding, payments during a chosen distribution period should be aggregated as in the example above.

SECTION IV EMPLOYMENT TAX = PAYROLL TAX

Employment Tax

The Internal Revenue Code provides that for purposes of FICA (Social Security and Medicare) 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. Independent contractors and employees are generally involved in gaming operations, and the gaming operation is responsible for filing certain IRS tax forms. See the section called Independent Contractors versus Employees on page 14.

Tribal gaming operations (employers) must generally withhold income and FICA taxes. These are deposited to the IRS on the employees’ behalf. Employers may also be subject to depositing unemployment tax on wages paid to an employee. (See exception below)

Employers are 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.

Exception - Federal employment tax also includes tax imposed under the Federal Unemployment Tax Act (FUTA). Beginning January 1, 2000, Indian tribes and any wholly owned tribal business are not required to file Form 940, Employer’s Annual Federal Unemployment (FUTA) Tax Return, as long as they participate in the State Unemployment Tax Act (SUTA) system. The employer is no longer exempt from FUTA if the employer elects not to participate in SUTA. The employer would become liable for FUTA taxes and will be required to file Form 940 with the IRS. Employers should be aware that nonparticipation in the state unemployment program may make tribal employees ineligible for unemployment benefits. For more information regarding FUTA tax for tribal governments and their wholly owned tribal businesses, see Publication 4268, Indian Tribal Government Employment Tax Desk Guide

Forms to file for employees:

Form	Employer's Responsibility	When
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.
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).	Paper forms are due last day in February; Electronic filing is due by last day in March
W-3	Transmit paper Forms W-2 to the Social Security Administration (SSA).	Paper forms are due last day in February;
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
940	Each employer is responsible for filing Form 940, Federal Unemployment Tax, unless participating in the State unemployment system and in full compliance with its requirements.	By January 31 following the tax year

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 or indirectly such as:

- Cash Tips
- Charge Tips
- Tip-Outs
- An employee's share of a tip-splitting or tip-pooling arrangement

When an employee receives tips greater than \$20 in a calendar month while working for any one employer, FICA and federal income tax withholding applies to these funds. FICA and federal tax withholding does not apply to tips of less than \$20 in a calendar month. Once the tip amount in a calendar month reaches \$20, the employee must report their tips to the employer to be included as wages – not just the amount over \$20. This must be done in writing by the tenth day of the month following the month the employee receives the tips.

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

The IRS office of Indian Tribal Governments offers workshops and presentations on tip income reporting. The IRS has developed some tools for assisting employers and employees with tip compliance. Employees are required to report tips to their employer monthly unless the tips were less than \$20. Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, a pocket sized record available for order from the IRS, includes two forms, 4070 and 4070A, for facilitating this reporting. The Form 4070A, *Employee's Daily Record of Tips*, is a monthly form used by tipped employees for keeping a daily record of tips received and tips paid out. The Form 4070, *Report to Employer*, is a monthly form used by tipped employees to provide their employer a summary of the total amounts of tips received. For more information see Publication 531, *Reporting Tip Income* or contact the Indian Tribal Governments Specialist in your area.

Many tribal gaming establishments have restaurants and/or bars which may run extended hours and allow tipping. These establishments often meet the definition of a large food or beverage establishment resulting in a filing requirement for Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*. Generally, a large food or beverage establishment is where there are more than 10 employees who collectively work more than 80 hours in the typical business day. For more information consult the Form 8027 Instructions.

Other Resources

Publication 3144, *Tips on Tips for Employers*

Publication 3148, *Tips on Tips for Employees*

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

Other Resources

Publication 4932, *Gaming Industry Tip Compliance Agreement (GITCA)*

Publication 4985, *GITCA for Employees*

Independent Contractor vs. Employee

For federal tax purposes, this is an important distinction. Workers may be classified as employees or independent contractors. Worker classification affects your employees eligibility for social security and Medicare benefits and determines your tax responsibilities. The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These relevant facts fall into three main categories: behavioral control; financial control; and relationship of the parties. In each case, it is very important to consider all the facts – no single fact provides the answer. (see [Publication 1779, *Independent Contractor or Employee*](#)) This determination is necessary for the purposes of filing the correct forms and paying the appropriate taxes (see [Publication 4268](#)). For more information contact the Indian Tribal Governments Specialist in your area.

A trade or business must file [Form 1099-MISC, *Statement for Recipients of Miscellaneous Income*](#), 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. If you have a question regarding Form 1099MISC, refer to 1099-MISC instructions or contact the IRS's Indian Tribal Governments Specialist in your area for assistance.

Form 1099-MISC requires a worker's name, address and TIN (Taxpayer Identification Number). The worker should complete [Form W9, *Request for Taxpayer Identification Number and Certification*](#). Employers use Form W-9 to verify a worker's TIN and to certify that the TIN is correct. Employers should secure the worker's TIN before making the first payment; otherwise, payments would be subject to backup withholding. Report backup withholding on [Form 945](#), not [Form 941](#). See Section VI for additional information related to filing electronically and TIN matching program.

Forms to file for Independent Contractors		
Form	Payer's Responsibility	When
W-9	Request and receive a properly completed and signed W-9	W-9 should be received and kept on file prior to making any payments
1099	Complete and furnish the 1099 to each payee of \$600 or more (cumulative payments) per year	Must be sent to the IRS by the last day of February. Must furnish to payee by last day of January following the year of payment
1096	Transmittal form which summarizes all 1099s issued	Must be filed by the end of February of the year following the year of payment
945	Payer must file 945 for voluntary/backup withholding	Must be filed by the end of January of the year following the year of payment

Example 1: Employer 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 employer does not have the right to direct and control John. Therefore, he is not an employee. The employer should file Form 1099-MISC for John.

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

How to make Federal Tax Payments

You must deposit through Electronic Federal Tax Payment System (EFTPS) amounts withheld such as:

- Employer and employee Social Security and Medicare taxes (Form 941)
- Income tax withheld (Form 941)
- Backup withholding (Form 945)
- Gambling withholding (Form 945)
- Foreign person withholding (Form 1042) (See Section VI – Nonresident Aliens)

Using EFTPS to make federal tax deposits provides substantial benefits to both taxpayers and the government. EFTPS users can make tax payments 24 hours a day, seven days a week from home or the office. Taxpayers can make deposits online with a computer or by telephone. EFTPS also significantly reduces payment-related errors that could result in a penalty. The system helps taxpayers schedule dates to make payments even when they are out of town or on vacation when a payment is due. EFTPS business users can schedule payments up to 120 days in advance of the desired payment date. You can find more information including how to enroll online or by calling EFTPS Customer Service at 1-800-555-4477.

When to make Deposits

If you have a deposit requirement for Form 941, there are two easy ways to remember:

- Make a deposit the same day you pay your employees OR
- Make the deposit before the due date.

Form 941 Deposit Due Date.

If you are a new employer and have never filed 941 forms, you are a Monthly Schedule Depositor for the first calendar year of your business unless you are a special exception to the rule. Monthly Schedule Depositors should deposit taxes from all of their paydays in a month by the 15th of the next month, even if they pay wages every week.

Employers with prior payrolls and taxes of \$2,500 or more per quarter must determine if they make either Monthly Schedule Deposits, or Semiweekly Schedule Deposits. This determination is based on your Form 941 taxes during a four-quarter Lookback Period.

1. Identify your Lookback Period.

Your Lookback Period for Calendar Year 2013				
2011		2012		2013
July 1 to September 30 3rd Quarter	October 1 to December 31 4th Quarter	January 1 to March 31 1st Quarter	April 1 to June 30 2nd Quarter	Calendar Year January 1 to December 31

2. Add the total taxes reported during the Lookback Period.

3. Determine your deposit schedule.

If the total taxes you reported in the Lookback Period were:	Then you are a:
\$50,000 or less	Monthly Schedule Depositor
More than \$50,000	Semiweekly Schedule Depositor

Monthly Schedule Depositors

Deposit each month's taxes by the 15th day of the following month (for example, taxes from paydays during July are deposited by August 15).

Semiweekly Schedule Depositors

IF the payday falls on a :	THEN deposit taxes by the following:
Wednesday, Thursday, or Friday	Wednesday
Saturday, Sunday, Monday, or Tuesday	Friday

Exception: If you accumulate a tax liability of \$100,000 or more on any day during a deposit period, you must deposit the tax by the next business day, whether you are a monthly or semiweekly schedule depositor. Monthly depositors must then follow the semiweekly schedule for the rest of the year. For more information about the \$100,000 One-Day Rule and the applicable deposit period, refer to *Publication 15, Circular E, Employer's Tax Guide, Depositing Taxes*.

Remember: Deposit rules are based on when wages are paid, not earned. For example, Monthly Schedule Depositors with wages earned in June, but paid in July, deposit August 15. Form 945 and Form 1042 may have different deposit requirements. For more information refer to the respective Form instructions or contact your Indian Tribal Government Specialist. Some businesses paying a minimal amount of tax may make their payments with the tax returns. Refer to *Publication 15, (Circular E) Depositing Taxes*, for more information.

Resource

The Employer's Tax Calendar from [Publication 509](#) lists various due dates for filing returns and for making employment tax deposits throughout the year. Use this calendar with Publication 15 (Circular E), which explains the deposit rules.

Employment Tax Penalties

Employment Tax penalties can multiply quickly. There are three main employment tax penalties: Failure to Deposit, Failure to File and Failure to Pay. These penalties are often assessed simultaneously.

- Failure to deposit - this penalty reaches 10 percent when past due by 16 days. This means even before return is due you could have 10 percent penalty.
- Failure to file - accrues at 5 percent per month reduced by applicable failure to pay penalty, capping at 25 percent.
- Failure to pay - begins accruing once the return due date has passed and all tax is not paid, also capping at 25 percent.

Example: Assume the last deposit of the quarter is due at the end of the month, and for whatever reason it is not paid. Then your employment tax return preparer misses a week of work beginning near the last day of the next month (when the return is due). At this point, the deposit is late, the return is late, and failure to pay the tax is now assessed. For being just 45 days late the penalties are now 15 percent and increasing by 5 percent per month for the next 4 months, going from 15 percent to 35 percent. If the last deposit was supposed to be \$20,000 then the penalty at 45 days is \$3,000 and at 5 months is \$7,000.

For more information see the chapter regarding penalties in [Publication 4268, *Employment Tax Desk Guide*](#). Additionally, [Helpful Hints to Avoid Penalties](#) is available on the IRS website under the Government Entities/Tax Information for Indian Tribal Governments/Employment Tax link.

Trust Fund Recovery Penalty (Failure to Withhold and Pay Employment Tax)

A trust fund recovery penalty may apply when an employer does not withhold or deposit employment tax that is withheld or supposed to be withheld. 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 the tax payment 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 anyone the IRS determines as responsible for collecting, accounting for, and depositing this tax, and who acted willfully in not doing so. Willfully, in this case, means voluntarily, consciously, and intentionally.

SECTION V TAX ON WAGERING

Definitions

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

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

There are two types of wagering tax: wagering tax imposed on the gross 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 gross 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, for purposes of the excise tax, does not depend on the amount that a bettor may win in the wager.

The law specifically exempts certain wagers from the wagering tax (note, gaming exemptions related to games conducted by a state or state agencies are beyond the scope of this publication). Exemptions relevant to Indian tribal government gaming include wagers placed:

1. with a pari-mutuel wagering enterprise, including horse racing, dog racing, and jai alai, licensed under state law;
2. in a coin-operated device, such as slot machines, pinball machines or video games (including electronic pull-tab machines); and
3. through drawings conducted by an organization exempt from tax under sections 501 and 521, as long as the net proceeds of the drawing do not benefit a private shareholder or individual.

(See *Form 730, Monthly Tax Return for Wagers*).

Wagering Excise 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 tax rate 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, Monthly Tax Return for Wagers

To report and file taxable wagers, you must file Form 730. This is a monthly return that must be filed by the last day of the month following the month you report taxable wagers. Once you begin filing, Form 730 must be filed in each month until a final return is filed, even if you receive no wagers in a month. These returns will report a liability of zero for the month. If you stop accepting wagers, you must file a final Form 730. 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 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 (presently due on July 1). 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, they must apply for one:

- Go to the IRS website and enter “Employer ID Numbers” in the search bar.
- You may also apply for an EIN by calling 1-800-829-4933, or
- You can fax or mail Form SS-4, Application for Employer Identification Number, to the IRS. If you mail the Form SS-4 to the IRS, attach a copy of the SS-4 to the Form 11-C when the Form 11-C is filed.

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

Tax Amount

You must pay the occupational tax if you accept taxable wagers for yourself or another person. There are two amounts of occupational tax (\$50 or \$500). One or the other applies depending on whether the wagers you accept are authorized by the laws of the state in which you accept the wager.

- If yes, then 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.

SECTION VI FILING REQUIREMENTS

Summary Filing Requirements for Tribal Gaming Operations

Business Operations					
User	Form	Send to IRS		Comments	Reference
		Reporting	Payment		
Employer	<u>941</u>	Mail	<u>EFTPS</u>		Sec IV
Employer	<u>W-2</u>	Mail/ <u>SSA BSO</u>	N/A	Paper filing requires <u>Form W-3</u>	Sec IV
Employer	<u>940*</u>	Mail	<u>EFTPS</u>		Sec IV
All employees	FinCEN SAR	<u>BSA E-Filing System</u>			Sec II
Cash Reporting	FinCEN CTR	<u>BSA E-Filing System</u>			Sec II
Pull Tabs etc.	<u>730</u>	Mail	<u>EFTPS</u>		Sec V
Pull Tabs etc.	<u>11-C</u>	Mail	<u>EFTPS</u>		Sec V
Resident Vendor	<u>1099-MISC</u>	Mail/ <u>FIRE</u>	<u>EFTPS</u> ¹	Paper filing requires <u>Form 1096</u>	Sec II
Non-Resident Vendor	<u>1042-S</u>	Mail/ <u>FIRE</u>	<u>EFTPS</u> ²	Paper filing requires <u>Form 1042-T</u>	Sec II
Food/Beverage	<u>8027</u>	Mail/ <u>FIRE</u>	N/A	Paper filing requires <u>Form 8027-T</u> when multiple venues	Sec IV

* If not participating in a state unemployment program.
 1. Report on Form 945 if withholding required.
 2. Report on Form 1042 if withholding required.

Patrons					
Recipient**	Form	Send to IRS		Comments	Reference
		Reporting	Payment		
Winnings to Resident	<u>W-2G</u>	Mail/ <u>FIRE</u>	<u>EFTPS</u> ¹		Sec VI
Prizes to Resident	<u>1099-MISC</u>	Mail/ <u>FIRE</u>	<u>EFTPS</u> ¹	Paper filing requires <u>Form 1096</u>	Sec VI
Winnings to Non-Resident	<u>1042-S</u>	Mail/ <u>FIRE</u>	<u>EFTPS</u> ²	Paper filing requires <u>Form 1042-T</u>	Sec VI
Prizes to Non-Resident	<u>1042-S</u>	Mail/ <u>FIRE</u>	<u>EFTPS</u> ²	Paper filing requires <u>Form 1042-T</u>	Sec VI

** Consult the OFAC SDN list prior to payment to ensure it is not a prohibited transaction. If there are multiple winners or nominee winner then prepare and retain Form 5754.
¹ Report on Form 945 if withholding required.
² Report on Form 1042 if withholding required.

IRS Tax Forms to File for Gaming Activities

Forms W-2G, 1099, 945, 1042-S, 1042

Determining the right form to file requires knowledge about the type of winnings as well as the person receiving them. Most individuals will receive either Form W-2G or Form 1099-MISC depending on their winnings. However, foreign individuals will receive Form 1042-S.

File Form W-2G, *Certain Gambling Winnings* when an individual(s) wager results in a win (e.g. jackpot) with a minimum specific dollar amount at a gaming event.

Tribal gaming operations generally report winnings if the amount is \$600 or more and at least 300 times the amount of the wager. However, these requirements do not apply to winnings from bingo, electronic gaming devices (e.g. slot machines), and keno. 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. If winnings from a keno game (reduced by the wager) are \$1,500 or more they are reportable gaming winnings.

File Form 1099-MISC when there is a prize awarded from an event without a wager. When filing paper returns transmit to the IRS both Form W-2G and Form 1099-MISC (with Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*). On page 28, under Verifying Residency, you will find more information on Form 1042-S filing and withholding requirements on foreign winners (as well as Form 1042 filing requirements).

In addition to filing information returns you may be required to withhold on gaming winnings. Deposit this withholding with the IRS and reconcile on annual returns using either Form 945 or Form 1042. For more information on Form 945 see page 26, Reporting and Withholding.

Identification Requirements

Form W-2G – This form must contain the winner’s name, address and social security number. It must also contain a general description of two types of valid identification (e.g. driver’s license, social security card or voters registration card) furnished to the gaming operator who will use these to verify the winner’s name, address and social security number. A valid ID is an unexpired government-issued form.

Examples of official government-issued IDs include but are not limited to the following:

- Driver’s license (DL)
- State-issued identification card
- Tribal-issued identification card
- Passport
- Alien registration card
- Military identification

If a gaming operator makes a payment without securing the winner’s taxpayer identification number (TIN), they must perform backup withholding on the winnings. See page 27 for more information about backup withholding and Form 945 filing requirements.

Form 1099-MISC – The verification requirements for this form are not the same as for Form W-2G. While the Form 1099-MISC also requires the winner’s name, address and social security number, it does not require two separate forms of ID or descriptions. Therefore, one valid photo identification is generally recommended to verify the name and address. You can substitute a Form W-9 for a social security card to certify a winner’s TIN. The patron does not sign the Form 1099-MISC.

Reporting and Withholding Gaming Winnings

The following presumes the winner is a U.S. resident. Foreign persons are subject to different withholding requirements. For more information, see the section on Verifying Residency.

Types of Winnings

Regular Bingo Game Win – A bingo game operator must complete Form W-2G for a single bingo win of \$1,200 or more. The winner must furnish the bingo game operator with their TIN, (typically social security number). See the earlier explanation for identification requirements.

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 TIN to the tribal gaming operation. The tribal gaming operation must complete Form W-2G, but is not required to withhold income tax.

If the winner does not provide a TIN, the bingo game operator must withhold tax (known as backup withholding) at the current backup withholding rate. See page 27 on backup withholding for more information.

Example 2: If the winner in Example 1 had refused to provide their TIN, the tribal gaming operation would complete Form W-2G without the TIN and apply backup withholding. The gaming operation reports withheld income tax on Form 945, Annual Return of Withheld Federal Income Tax. The winner would receive \$936 (\$1,300 gross winnings minus \$364 - federal income tax withheld at the rate of 28 percent). In 2013, the backup withholding rate was 28 percent. (Rates can change – check irs.gov).

Lotteries, Sweepstakes, Horse Races, Dog Races, Instant Bingo Game Wins/Pull-Tabs, Jai Alai, and Other Wagering Transactions – A single win less than \$600 involving lotteries, sweepstakes, horse races, dog races, instant bingo game wins/pull-tabs, jai alai and other wagering transactions does not require completing a Form W-2G or withholding federal income tax.

Wins less than \$5,000 - A single win of at least \$600 requires completing 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 their TIN or the game operator must withhold tax at the current backup withholding rate. See page 22 for identification requirements. Backup withholding applies to the amount of winnings reduced, at the option of the payer, by the amount wagered. See Reportable Gambling Winnings in the [Instructions for Forms W-2G and 5754](#) for more information.

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. 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 gaming operation may pay 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, the tribal gaming operation must complete a Form W-2G. Since the initial ticket purchase entitled the patron to both amounts, the gaming operation combines them as a single win of \$649 (\$650 - \$1 – the pull-tab cost).

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

Wins of \$5,000 or more – If a single win, less the wager, exceeds \$5,000, the gaming operation must complete a Form W-2G and withhold on the net winnings at the current rate.

Example 3: A tribal gaming operation has a winner of \$5,100 from one of the pull- tabs, which cost \$10. Because the winnings, less the wager, exceed \$5,000, complete Form W-2G and withhold federal income tax. Report the income tax withheld on Form 945. If the winner provides identification, the winner receives \$3,827.50 (\$5,100 gross winnings less \$1,272.50 withholding tax = computed \$5,100 minus \$10 wager, times 25 percent).

The following chart describes when a tribal gaming operation must issue a Form W-2G:

Game	Win is Equal to or Greater Than
Lotteries, Sweepstakes, Horse Races, Dog Races, Instant Bingo Game Prizes/Pull-Tabs, Jai Alai and other wagering transactions	\$600
Bingo	\$1200
Slot Machines	\$1200
Keno	\$1500

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

If so, the tribal gaming operation must complete Form 5754, Statement by Person(s) Receiving Gambling Winnings. Completing this form enables the tribal gaming operation to prepare Form W-2G. There are two parts to Form 5754. This first part lists the identification of the person who is receiving the winnings. 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. The tribal gaming operation does not submit Form 5754 to the IRS, but it should keep the form with its tax records for four years.

The amount paid on the winning ticket, not each individual's share of the proceeds, determines whether the tribal gaming operation will need to complete a Form W-2G.

Example: A tribal gaming operation 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. John Doe appears at the cage to redeem the pull-tab.

If John and Judy contributed equal amounts toward the purchase of the ticket and agreed to share equally in any winnings, complete Form 5754 as follows:

- Part I - List the name, address and identification number of the individual who was actually paid (win must be paid to one individual). In the box for amount received, include the total \$1,200 win.
- Part II - List John Doe's name, address and identification number. Include in box (d) \$600 as the amount won (his share of the win). List Judy Smith's name, address and identification number. Include in box (d) under her name \$600 (her share of the \$1,200 win).
- Signature – If the tribal gaming operation withholds federal income tax, then John Doe signs and dates the form (not required in this instance unless John Doe refuses to supply his TIN).

The tribal gaming operator should complete the Form W-2G upon paying the winnings to the winner. Copies B, C, and 2 of this form may be given to the winner at the time of completion. However, the winner must receive these copies no later than January 31 of the following year. The tribal gaming operator must submit to the IRS Copy A of Form W-2G and Form 1096 by February 28 of the year following the year the gaming winnings were paid, if filing paper returns. The tribal gaming operator submits Copy 1 of Form W-2G to the state and retains Copy D.

A tribal gaming operation may voluntarily file electronically using the FIRE system (see FIRE at the end of this section). However, if it prepares 250 or more information returns, it must file electronically. The 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 W2G electronically, but you are not required to file Forms 1099-Misc electronically.

Non-Wagering Prizes - Tribal gaming operations must issue a Form 1099-MISC to each patron who receives \$600.00 or more in a calendar year in cash or prizes where there is no wager. See the Gaming Withholding and Reporting Threshold – Forms Needed chart on page 32. Aggregate and report separate transactions involving the same patron onto a single form for the calendar year as shown by the following example:

Example 1: Jim wins a television with a fair market value of \$800.00 in a drawing on January 17. On October 16 of the same year, Jim wins a cash door prize of \$300.00. Issue Form 1099-MISC to Jim for \$1,100.00.

Example 2: The tribal gaming operation has a 4th of July drawing for a vehicle. Players that put at least \$1,000 cash into slot machines, receive a ticket. Also, any table game player that buys in with \$100 or more will receive a ticket. All the drawing tickets are dropped into a secure box and held until the day of the drawing. On July 4, a ticket is drawn, and the winner receives the vehicle. The casino issues a Form 1099-MISC to the winner.

Note: If an employee of the tribal gaming operation wins a prize see Section IV regarding reporting.

The IRS may assess penalties against a tribal gaming operator if the Form 1099 or Form W-2G contains incomplete or incorrect information. ITG has created a “[Helpful Hints to Avoid Penalties](#)” guide available on the [ITG website](#). The guide offers suggestions on how to avoid penalty assessments. It also outlines the steps required to address what to do if the IRS assesses penalties.

Reporting and 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 on Form 945, Annual Return of Withheld Federal Income Tax. If there are Tribal-State compact requirements for state withholding, the tribal gaming operation reports that amount on the applicable state forms.

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

- 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

Remember: You must report winnings of \$600 or more when the amount paid is a least 300 times the amount of the wager from any wagering transaction. This includes wagers in a pari-mutuel pool with respect to horse races, dog races and jai alai. Report these winnings on Form W-2G. Do not withhold unless the proceeds are more than \$5,000 and the amount paid is at least 300 times the amount of the wager. If the winner does not provide their TIN, backup withholding applies.

Regular gambling withholding applies to the total amount of gross proceeds, not merely the amount in excess of \$5,000. Check [IRS.gov](#) for regular withholding rates on gambling winnings.

Tax Year Effective Date	Rate/Percentage
2005 thru 2013	25 percent

Example 1: A tribal gaming operation owes a single pull-tab prize of \$6,000. The winner provides an SSN. The tribal gaming operation should withhold \$1,500 ($\$6,000 \times 25$ percent) and pay the winner \$4,500 ($\$6,000 - \$1,500$) since the win is greater than \$5,000.

Noncash payments for winnings – If a wagering win is not cash, the fair-market-value of the item won determines the amount of the winnings. If required, the gaming operation applies withholding or backup withholding rates to the fair-market-value of the item won. It may collect the amount from the winner before delivering the win or pay the taxes on the winner’s behalf and increase the amount of the win. Please see the [Form W-2G Instructions](#) for non-cash payments for detailed examples.

What if the tribal gaming operation pays the tax as a part of the winner’s proceeds? If a tribal gaming operation wants to award the full amount of the win, then the win needs to be “grossed up.” The tribal gaming operation pays the federal tax it is required to withhold without deducting the taxes from the winner’s proceeds, and the winner’s proceeds is deemed to include the tax paid by the tribal gaming operation. On Form W-2G, the tax paid by the tribal gaming operation appears in the box for federal income tax withheld. The tax paid is also added to the amount of the winnings and the combined amount is reported as the win.

The following chart illustrates the applicable withholding and backup withholding rates.

Tax Year Effective Date	Withholding Rate/Percentage	Backup Withholding Rate/Percentage
2005 thru 2013	33.33 percent	38.89 percent

Note: These rates are subject to change when the underlying withholding rates change (check rates on irs.gov or contact your ITG specialist)

Backup Withholding – This type of withholding applies when the winner fails to provide a TIN to the tribal gaming operation for a reportable win or prize. If the TIN does not contain nine digits or contains alpha characters, then the winner has not provided a valid TIN. The gaming operation can use a Form W-9 to request a winner’s TIN. If the tribal gaming operation makes payment before securing the TIN, then it may be held liable for backup withholding taxes. The following chart illustrates the backup withholding rates (rates can change – check irs.gov).

Tax Year Effective Date	Rate/Percentage
2005 thru 2013	28 percent

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

Reporting Withholding – The tribal gaming operation must use Form 945 to report regular withholding from gaming proceeds. Report withholding on line one and backup withholding on line two. File this form annually by January 31 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, confirm the grace period filing by reviewing Form 945 instructions.

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

Game	Regular gambling withholding winnings more than	Backup withholding winnings equal to or more than (when no TIN is furnished)
Bingo	N/A	\$1200
Slot Machines	N/A	\$1200
Keno	N/A	\$1500
Wagering Transaction (\$5000 or less)	N/A	\$600
Lotteries, sweepstakes, horse races, dog races, instant bingo game prizes/pull-tabs, and jai alai	\$5000	\$600
Wagering transactions when winnings are at least 300 times the amount wagered	\$5000	\$600

Failure to Pay Withholding Tax - A tribal gaming operation is responsible for paying to the IRS the amount of regular gambling withholding or backup withholding due regardless if it collects the withholding from the recipient. The best time to collect withholding or backup withholding is before paying the winnings.

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 tribal gaming operation must withhold \$1,499.75 (\$6,000 prize-\$1 wager X 25 percent). Jack receives \$4,500.25 cash. If the tribe fails to withhold, it will be liable for the tax.

The IRS will assess penalties for failure to deposit taxes withheld, failure to file a return on time and failure to pay taxes on a return.

Verifying Residency

How do you ensure you get 30 percent withholding on total jackpot instead of 25 or 28 percent? Undocumented foreign patrons can be U.S. tax residents subject to W-2G reporting and 28 percent backup withholding. If the winning patron provides you a U.S. address but no social security number, then backup withholding is required at 28 percent. Nonresident aliens may or may not have a social security number. If you are provided a foreign address and no social security number you should withhold at 30 percent for nonresident aliens on Form 1042-S. Form 1042-S may either be filed on paper or electronically, using the FIRE system. For more information, see [Publication 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically.](#)

Please note: Gaming operations report foreign person withholding on Form 1042, not Form 945.

How do you verify if the winner is a resident or nonresident alien? If someone wasn't able to provide their valid driver's license and their social security number, then you should request other forms of identification. An alien may have one or more of the following forms of identification:

- U.S. or foreign driver's license
- National identification card
- U.S. state-issued identification card
- Passport
- Visa
- U.S. military identification card
- U.S. Citizenship and Immigration Service (USCIS) photo identification
- U.S. resident alien card (often referred to as a "green card")

If they provide a U.S. address then it would be reasonable to request their social security number or Individual Taxpayer Identification Number (ITIN). If they do not have either a social security number or a U.S. address, providing them with Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding is appropriate. Usually nonresident aliens (commonly known as foreign persons) are visitors from other countries or temporarily residing in the U.S. If the individual is a Nonresident Alien, use a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, to report payments made to them.

Note regarding U.S. possessions: Individuals born in U.S. Virgin Islands, Puerto Rico, and Guam are generally U.S. Citizens and receive Forms 1099/W-2G. Persons born in American Samoa or the Commonwealth of Northern Mariana Islands are considered nonresident aliens, therefore subject to foreign withholding and Form 1042-S.

In addition, the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against:

- targeted foreign countries and regimes, terrorists, international narcotics traffickers;
- those engaged in activities related to the proliferation of weapons of mass destruction; and
- other threats to the national security, foreign policy or economy of the United States.

As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. OFAC also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them. Therefore, you should consult this list before making payments to nonresident aliens. Please note, U.S. persons can be on this list. OFAC has authority to assess penalties for compliance failures.

Unlike the requirements for Forms W-2G and 1099-MISC, there is no dollar threshold for withholding or reporting purposes related to Form 1042-S. Therefore, a tribal gaming operation must withhold taxes and report any gambling proceeds or other payments paid to a nonresident. The withholding rate on nonresident aliens is generally 30 percent, unless the foreign country has a treaty with the U.S. for a lower rate.

You can use Form W-8BEN for status determination of nonresident aliens. Use Section 1 for identification. Nonresident aliens may claim a lower withholding rate under a treaty, if applicable, by preparing Section 2 of Form W-8BEN. Refer to Publication 901, U.S. Tax Treaties and Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

A patron can submit a Form W-8BEN to receive a reduced rate or an exemption from withholding, as a resident from a tax treaty country. However, a winner still needs to provide a U.S. Taxpayer Identification Number (TIN) to receive this treatment. If a winner is from a treaty country but does not have a U.S. Taxpayer Identification Number, then withhold at 30 percent on Form 1042-S.

Exception – Proceeds from certain games are exempt from taxation. You are not required to impose tax or report gambling income of a nonresident alien playing traditional blackjack, baccarat, craps, roulette and big-6 wheel games in the United States.

Use Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, to report payments made to nonresident aliens and required withholding. File Form 1042-T with paper Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. Submit all of these forms to the Internal Revenue Service by March 15 of the following year. You may voluntarily file electronically using the FIRE system. If you file 250 or more Forms 1042-S during a year, then the tribal gaming operation must submit them electronically. The IRS may assess penalties against a tribal gaming operator if the information shown on the Form 1042-S is incomplete or incorrect.

Failure to Pay Withholding Tax - A tribal gaming operation is responsible for paying to the IRS the amount of foreign withholding due, whether or not it collects the withholding from the recipient. The best time to collect foreign withholding is before it is paid out. The IRS will assess penalties for failure to deposit taxes withheld, failure to file a return on time and failure to pay taxes on a return.

FIRE

You can file electronically using the Filing Information Returns Electronically (FIRE) system. The FIRE System operates 24 hours a day, 7 days a week. Publication 1220 will assist with preparing files for upload through the FIRE system. You can use FIRE to file the following information returns: Form 1042-S, 1098, 1099, 8027, and W-2G. If you file 250 or more of these returns for any calendar year, you must file your information returns electronically. If you file less than 250 information returns, then you can voluntarily use the FIRE System.

Here are the benefits of using FIRE:

- It's paperless - no Form 4804 requirements
- It's a secure system that supports SSL 128-bit encryption
- It's easy to use
- It's efficient with a 1-2 day notification of receipt of returns
- It's fast because transmission time is reduced by up to 95 percent
- It's flexible because due dates are extended for electronically filed forms 1098, 1099, and W-2G.

To enroll, complete Form 4419, Application for Filing Information Returns Electronically/Magnetically, and mail it to IRS-Martinsburg Computing Center (MCC). You can also contact MCC at their customer service toll free number 1-866-455-7438 between 8:30 a.m. and 4:30 p.m. Eastern Standard Time Zone or by email.



Gaming Withholding and Reporting Threshold – Forms Needed

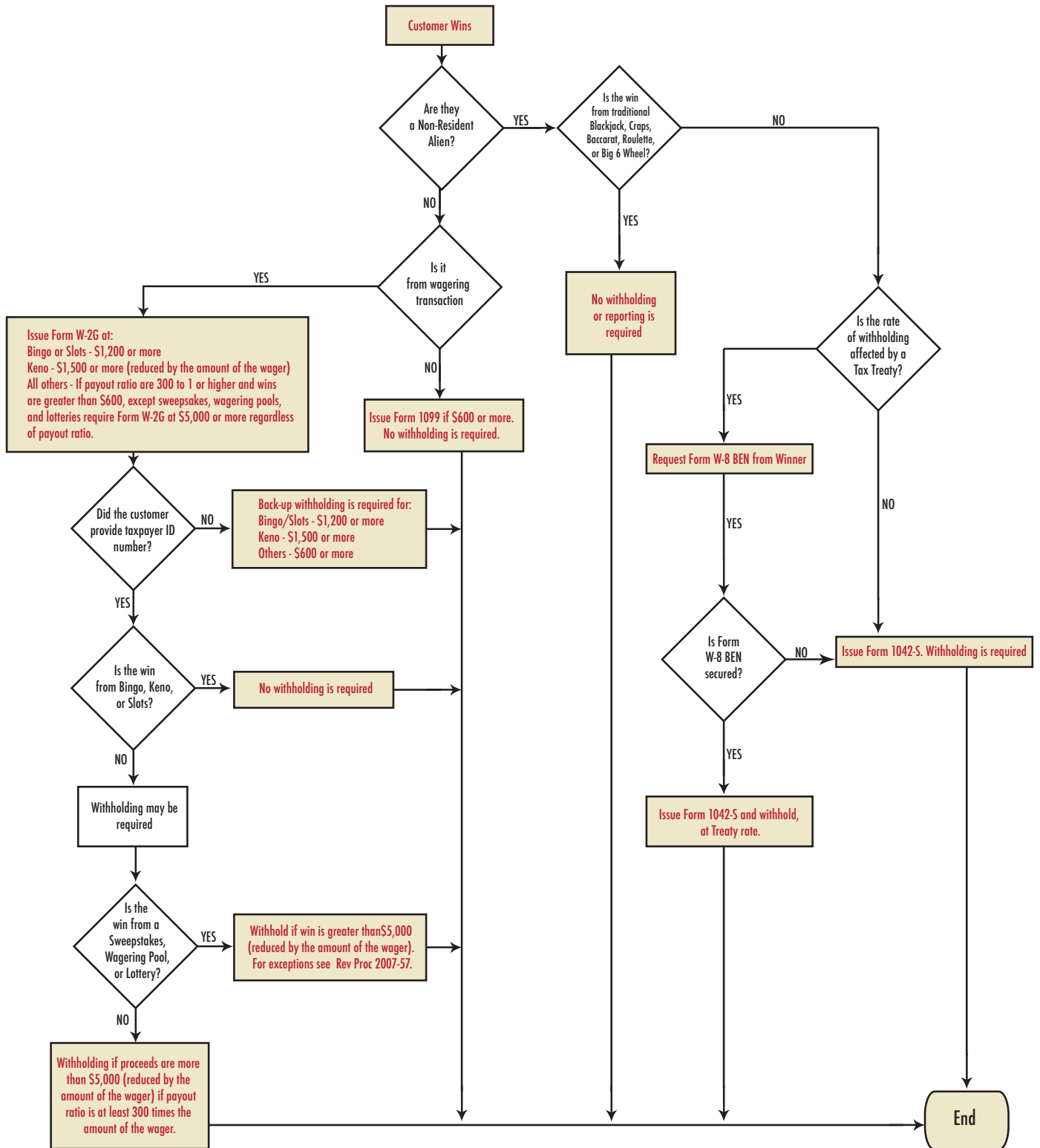
Game	Form 1099 Required	Form W-2G Proceeds Not Reduced by Wager	Form W-2G Proceeds Reduced by Wager	Form W-2G Withholding Required (1)	Form 1042-S Foreign Payouts Verifiable Payments(2)	Excise Tax (Based on the Wager)
Slot Win (slot tournaments with entry fee)		\$1200			Yes	No
Bingo Win (Bingo Tournaments with entry fee)		\$1200			Yes	No
Keno Win (IRC 4421(2)(A) applicable) (3)(5)			\$1500		Yes	No
Keno Win (IRC 4421(2)(A) not applicable) (4)(5)			\$1500		Yes	Yes
Sweepstakes, Lotteries, Wagering pools (proceeds more than 300 times the amount wagered)			\$600		Yes	Yes (State conducted lotteries are exempt)
Sweepstakes, Lotteries, Wagering pools. Withholding required regardless of payout ratio				\$5000	Yes	Yes (State conducted lotteries are exempt)
Wagering transactions with proceeds more than 300 times the amount wagered			\$600	\$5000	Yes	No
Tournament – no entry fee	\$600				Yes	No
Tournament – with entry fee (6) & (7)						
Pari-mutuel, including horseracing, dog racing, and jai alai with proceeds more than 300 times the amount wagered			\$600	\$5000	Yes	No
Prizes received with no wager (Drawings, Promotions, Bad Beat Poker win, etc.)	\$600				Yes	No
Sports event or contest (only reportable if proceeds exceed 300 times the wager)			\$600	\$5000	Yes	Yes
Pull-tabs			\$600	\$5000	Yes	Yes ⁸

Note:

1. Winnings proceeds must exceed \$5,000 after reduction of the amount wagered.
2. Payments made to non-resident aliens are subject to withholding and reporting on Form 1042-S (Proceeds from traditional blackjack, craps, roulette, baccarat, or big wheel 6 are exempt from withholding and reporting.)
3. Wagers placed, winners determined and disbursement of prizes made in the presence of all participants
4. Odds greater than 300 to 1 and either advance wagers or winner not required to be present results in excise tax
5. Multi-race and Multi-way Keno games must be aggregated and reported as a single transaction as indicated above.
6. See Revenue Procedure 2007-57 for poker tournament filing and withholding requirements.
7. For tournaments other than poker tournaments, entry fees must be analyzed to see if the entry fee is a wager, and if the proceeds exceed the wager by 300 times or more, or if the tournament is a wagering pool.
8. Electronic (coin-operated) Pull-Tabs are not subject to the gaming excise tax.

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

Gaming Guidelines When to Withhold and Report Gaming Wins



SECTION VII 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 are listed below:

- [Publication 15](#) - *Circular E, Employer's Tax Guide*
- [Publication 15A](#) - *Employer's Supplemental Tax Guide*
- [Publication 509](#) - *Tax Calendars*
- [Publication 510](#) - *Excise Taxes*
- [Publication 515](#) - *Withholding of Tax on Nonresident Aliens and Foreign Corporations*
- [Publication 531](#) - *Reporting Tip Income*
- [Publication 966](#) - *Electronic Federal Tax Payment System (EFTPS)*
- [Publication 1771](#) - *Charitable Contributions - Substantiation & Disclosure Requirements*
- [Publication 3609](#) - *Filing information Returns Electronically System (FIRE)*
- [Publication 4132](#) - *EFTPS Marketing*
- [Publication 4268](#) - *Indian Tribal Governments Employment Desk Guide*
- Annual Instructions for Forms [1099](#), [1098](#), [W-2G](#), [8027](#), [1042-S](#)

You can download most publications, forms, and a variety of tax-related information through the [IRS website](#), or you can order them at no charge by calling (800) 829-3676.

Reporting Abuses/Schemes

ITG continues 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 (503) 415-7080, or by e-mail (tege.itg.schemes@irs.gov).

Customer Service Assistance

Visit the [Indian Tribal Governments Web site](#) for tribal tax law information, call toll-free for assistance, or write/email our office with your questions.

Indian Tribal Governments T:GE:ITG

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