



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 on income tax reporting, employment tax and excise tax. The requirements apply to gaming activities whether they take place one time or throughout the year, and 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), 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, primarily slot machines, casino games, banking card games, dog racing, horse racing and lotteries.

This Internal Revenue Service (IRS) publication provides you with the tax law on gaming operations for these activities. You'll learn about recordkeeping, employment tax, tax on wagering, per capita distributions, forms to file and more. You can download or order all IRS forms and publications mentioned in this publication at www.irs.gov/forms-pubs.

Visit www.irs.gov/tribes for information for Indian Tribal Governments (ITG). For more information on gaming tax law, you can contact your [ITG specialist](#) or the ITG 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)

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.

Highlights of IGRA include:

- Provides a statutory basis for the regulation of Indian gaming to ensure that tribes are the primary beneficiaries
- Establishes federal standards for Indian gaming
- Shields gaming from organized crime and other corrupting influences
- Ensures that the operators and players conduct gaming fairly and honestly
- Provides a statutory basis for the operation of gaming by Indian tribes to promote tribal economic development, self-sufficiency and strong tribal governments
- Establishes the National Indian Gaming Commission (NIGC)
 - Independent federal regulatory authority for Indian gaming
 - Meets congressional concerns about 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 that 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
- Check cashing and currency exchange services

Since these services are similar to those provided by depository institutions and other financial firms, casinos are vulnerable to abuse by money launderers and tax evaders.

Highlights of the BSA include:

- Provides rules and regulations on reporting currency transactions greater than \$10,000
- Provides rules and regulations on identification and recordkeeping requirements
- Creates an audit trail to help minimize illegal financial transactions
- Covers casinos with gross annual gaming revenue exceeding \$1,000,000
- Extends coverage to Indian casino operations in August 1996 and card clubs in August 1998

Section 352 of the USA PATRIOT Act of 2001

Section 352 of the USA PATRIOT Act of 2001 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 for 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 NIGC oversees Indian gaming. Its primary mission is to regulate gaming activities conducted by tribes on Indian lands.

NIGC's 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 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 of the U.S. Department of the Treasury administers and enforces economic and trade sanctions 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 NIGC is responsible for overseeing Indian gaming, the IRS is responsible for federal taxation issues on 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 interprets federal tax law on tribal entities and enterprises.

Even though Indian tribes are not subject to federal income tax, an individual tribal member not exempt from income taxation must report gross income amounts distributed or constructively received.¹ In tribal gaming, structure and ownership of a gaming operation has a significant impact on the taxability of the income.

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, income may be subjected 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 isn't 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 state issued certification of incorporation is evidence of incorporation under state law.

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

SECTION II RECORDKEEPING AND REPORTING

The Tribe's Legal Responsibilities

Tribal governments that conduct gaming operations deal with large numbers of individuals and currency. Tribal gaming operations should actively oversee and control all the gaming activities to ensure that they don't divert funds to private individuals or for private purposes. The IGRA provides the framework to handle necessary recordkeeping when a tribe is involved in 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.

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 the tribe has hired a management company to run gaming operations or 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 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 verify that the internal control systems 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

BSA requirements apply to casinos and card clubs and designate them as financial institutions if:

- 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 over \$1,000,000

See the Code of Federal Regulations, Title 31, [Sections 1010.100\(t\)\(5\)\(i\) and \(t\)\(6\)\(i\)](#).

Recordkeeping Requirements

Whether the tribe has hired a management company to run their gaming operation or is running the operation itself, the tribe must:

- Maintain all books and records used to determine gross and net income
- Determine information reporting responsibilities

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 gaming operation records must reflect that amount.

Example 2: A player cashes in a \$1 winning ticket for another ticket. \$1 must be included in gaming operation gross receipts and \$1 is included in prizes awarded. The amounts cannot be "netted."

Example 3: If the player does not have a Social Security number (SSN), determine if the player is a foreign national subject to foreign withholding and Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, filing requirements.

The NIGC regulations require the tribe to keep its books and records of Class II or Class III operations for at least five years. Additionally, the tribe must preserve its records to the later of:

- Four years after the employment tax return's due date, or
- Four years from the date it paid the tax.

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 BSA requires a casino or card club to maintain and retain the following operation records:

- 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 on 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, for example, federal, state, local or tribal
- Records prepared or used to monitor customers' gaming activity, for example, player rating records, multiple transaction logs
- 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 all 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 five years. These records must be filed or stored to be accessible within a reasonable period of time. For more information regarding record retention, see the Code of Federal Regulations, Title 31, [Section 1010.410](#).

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\(h\)](#) and the Code of Federal Regulations, Title 31, [Section 1021.210\(a\)](#). 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. [Section 1021.210\(b\)](#) contains the specific compliance program requirements. Casinos and card clubs must develop and implement a written program designed to assure and monitor compliance with the BSA.

The Bank Secrecy Act compliance program must include:

- A system of internal controls to assure ongoing compliance
- BSA requirements training for personnel
- Designated individuals to assure day-to-day compliance
- If available, automated data processing systems to be used in assuring compliance
- Internal 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 on 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. OFAC also maintains requirements under their own compliance program for anti-money laundering. For more information related to [OFAC compliance programs](#), see the FAQ section of [Questions from Financial Institutions](#), specifically Question #30. 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 BSA 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 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 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 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 always report a suspicious transaction within 60 calendar days after the date of initial detection. The following examples demonstrate how an activity may appear suspicious:

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

Example 2: A customer purchases large amounts of chips with currency at table games, engages in minimal gaming and then redeems the chips for casino checks.

Example 3: A customer furnishes identification documents that are false or altered (for example, address changed, photograph substituted).

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 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’s important to make the distinction between the casino’s legal name and trade name.

The Financial Crimes Enforcement Network’s [Suspicious Activity Reporting Guidance for Casinos](#) explains how to prepare a complete and sufficient “narrative” and provides 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. It is unlawful under the Bank Secrecy Act and subjects a person to 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 total more than \$10,000. It would treat the cash-in or cash-out transactions as a single transaction and as though conducted by or for the same person. It isn't 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 over \$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 CTR for instructions on how to complete the form and the Code of Federal Regulations, Title 31, [Section 1010.312](#) for the requirement to identify persons involved in currency transactions.

Multiple currency transactions may reach the threshold reporting requirements for FinCEN CTR without requiring Form W-2G, Certain Gambling Winnings, reporting. Casinos and card clubs must have procedures in place to ensure accurate filing. An example would be multiple slot jackpots below \$1,200 aggregating to more than \$10,000.

If a currency transaction exceeds \$10,000 and is suspicious, a casino or card club must file a CTR (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 through FinCEN's [BSA E-Filing System](#).

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, and so on, 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 daily, and there are filing and withholding issues related to this interaction. Domestic vendors generally provide [Form W-9](#), Request for Taxpayer Identification Number and Certification, 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 that use foreign vendors must be aware of additional filing and withholding requirements. The backup withholding for failure to provide a taxpayer identification number (TIN), discussed more completely in Section VI, applies to domestic vendors.

It's important to note that vendors from foreign countries are not subject to backup withholding rules but instead, are subject to Internal Revenue Code (IRC) Section 1441 foreign withholding rules. These rules are similar to the gaming withholding rules for nonresident aliens covered in Section VI of this publication. Foreign vendors with domestic operations should have an EIN and domestic address, which would allow Form W-9 submission. Generally, [Form W-8BEN](#), Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), is similarly used for foreign vendors.

There is no dollar threshold for withholding or reporting purposes related to [Form 1042-S](#), Foreign Person's U.S. Source Income Subject to Withholding. 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% unless the foreign country has a treaty with the United States 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. TIN to receive this treatment. If a vendor is from a treaty country, but does not have a U.S. TIN, withhold 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](#), Annual Summary and Transmittal of Forms 1042-S, with paper [Forms 1042-S](#), Foreign Person's U.S. Source Income Subject to Withholding. Submit these forms to the IRS by March 15 of the following year. You may voluntarily file electronically using the FIRE system.

If a tribal gaming operation files 250 or more Forms 1042-S during a year, the operation must submit the forms 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. 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 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:

1. It must prepare a plan to allocate revenues only for IGRA authorized uses to:
 - fund tribal government operations or programs,
 - provide for the general welfare of the Indian tribe and its members,
 - promote tribal economic development,
 - donate to charitable organizations, or
 - fund local government and agency operations.
2. The Secretary of the Interior must approve the revenue's use, particularly when it's for funding tribal government operations or programs and for promoting tribal economic development.
3. 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.
4. The per capita payments are subject to federal taxation and tribes notify members of this 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 for how tribes must submit tribal revenue allocation plans or ordinances for review and approval. 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 of how it intends to use and allocate its net gaming revenues. The allocation plan must 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

The IGRA requires protections of the minors' interests for gaming revenue distribution. To satisfy this requirement, many tribes establish trusts for minors and legal incompetents. A tribe may serve as the grantor and owner of the trust.

[Revenue Procedure 2011-56](#) 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 received.²

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 she reaches age 18. 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 doesn't 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, those funds become taxable.

Withholding Requirements of Distributions from Net Gaming Revenue

Per capita distributions from gaming are subject to federal taxation under IRC Section 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](#), Miscellaneous Income. When the tribal members receive their Forms 1099-MISC, they report the income on the "Other Income" line of their Form 1040, U.S. Individual Income Tax Return, 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 under IRC [Section 3406](#). See [Reporting and Withholding Gaming Winnings](#) of this publication and Form 945 filing requirements for more information. 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. [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 under the tables and the amount actually withheld.

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 10-24%.

Example: A tribe distributes \$31,000 of per capita payments to tribal members during 2018. A regular monthly per capita payment of \$2,000 is issued during the months January through December. During December, an additional per capita payment is made of \$7,000, for a cumulative distribution of \$9,000.

The computation for withholding on monthly per capita payments would be based on the \$2,000 monthly payment for January to November and for December, the aggregate payment amount of \$9,000. Using the tables for 2018 for monthly distributions, payments of \$2,000 are subject to 10% withholding on the amount over \$1,000, or \$100 ($.10 \times \$1,000$). The December payment would be \$1,174.12 plus 24% of the amount over \$7,875 or \$1,444.12 ($1,174.12 + 270 (.24 \times (\$9,000 - \$7,875))$).

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

“Wages” for purposes of FICA (Social Security and Medicare) and federal income tax withholding means all payments received for “employment” with certain exceptions. Unless payments to employees are excepted from the term “wages” or the services performed by the employee are excepted from the term “employment,” the payments are 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 Independent Contractor vs. Employee section of this publication.

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 [Form W-2](#), Wage and Tax Statement, and [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, if 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 will 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 on FUTA tax for tribal governments and their wholly owned tribal businesses, see [Publication 4268](#), Employment Tax For Indian Tribal Governments.

Forms to File for Employees		
Form	Employer’s responsibility	When
W-4	Request signed W-4 from all employees	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	By January 31 of the following year
W-3	Transmit paper Forms W-2 to the Social Security Administration	By January 31 of the following year
941	Each employer is responsible for filing Form 941 - reporting wages, federal income tax withholding, Social Security and Medicare tax withholding each quarter	By the last day of the month following the end of the calendar quarter
940	Each employer is responsible for filing Form 940 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. 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 tools to assist 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 tipped employees may use for keeping a daily record of tips received and tips paid out. The [Form 4070](#), Employee's Report of Tips to Employer, is a monthly form tipped employees may use 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 or bars that 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: A Guide to Tip Income Reporting for Employers in Businesses where Tip Income is Customary

[Publication 3148](#), Tips on Tips: A Guide to Tip Income Reporting for Employees Who Receive Tip Income

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. To reduce burden and improve tip reporting compliance by employers and employees, the IRS has developed TRD/EP. 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% 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 nongaming, at the tribal gaming operation.
- GITCA – Under this arrangement, a gaming industry employer and the IRS work together to reach an 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 GITCAs.

Other Resources

[Publication 4932](#), Gaming Industry Tip Compliance Agreement (GITCA)

[Publication 4985](#), Gaming Industry Tip Compliance Agreement (GITCA) for Tipped Employees

Independent Contractor vs. Employee

For federal tax purposes, the distinction between independent contractor and employee is important. 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 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](#), Employment Tax For Indian Tribal Governments). For more information contact the Indian Tribal Governments specialist in your area.

A trade or business must file [Form 1099-MISC](#), 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 1099-MISC, refer to the [1099-MISC instructions](#) or contact the Indian Tribal Governments specialist in your area.

Form 1099-MISC requires a worker's name, address and TIN. The worker should complete [Form W-9](#), 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](#), Annual Return of Withheld Federal Income Tax. See Section VI for additional information related to filing electronically and the 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 to each payee of \$600 or more (cumulative payments) per year	Must be sent to the IRS by January 31. Must furnish to payee by last day of January 31 of the year following the year of payment
1096	Transmittal form summarizing all 1099s issued	Must be filed by January 31 of the year following the year of payment
945	Payer must file 945 for voluntary/backup withholding	Must be filed by January 31 of the year following the year of payment

Example 1: Employer pays John \$1,000 per week to clean the bingo hall. 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 bingo hall. 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)

Using EFTPS to deposit federal taxes provides substantial benefits to taxpayers and the government. EFTPS users can make tax payments 24 hours a day, seven days a week 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 800-555-4477 (TDD 800-733-4829).

When to Make Deposits

If you have a deposit requirement for Form 941, you may make a deposit:

- The same day you pay your employees, or
- Before the due date.

Form 941 Deposit Due Date

If you are a new employer and have never filed a Form 941, you are a monthly schedule depositor for the first calendar year of your business unless you meet a special exception to the rule. Monthly schedule depositors should deposit taxes from all 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 2020			
2018		2019	
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

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 Next-Day Deposit Rule and the applicable deposit period, see [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 form instructions or contact your Indian Tribal Governments specialist. Some businesses paying a minimal amount of tax may make their payments with the tax returns.

Resource

The Employer's Tax Calendar from [Publication 509](#), Tax Calendars, lists due dates for filing returns and for making employment tax deposits throughout the year. Use this calendar with Publication 15, 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 at the same time.

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

Example: The last deposit of the quarter is due at the end of the month and it is not paid. 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 45 days late the penalties are 15% and increasing by 5% per month for the next 4 months, going from 15% to 35%. 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 on penalties in [Publication 4268](#), Employment Tax For Indian Tribal Governments, and [Publication 5343](#), Helpful Hints for Indian Tribes and Tribal Entities to Avoid Penalties on Federal Tax Deposits and Information Returns.

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, 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 apply 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 is 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 that conduct gaming activities should be aware that wagering tax and occupational tax might apply based on 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 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 be excluded from the wagering tax. The general rule is if a Keno game is live, meaning all players are present and winnings are paid before the beginning of the next game, it is not subject to the gaming excise tax. Generally, with Keno games over 20, the player may leave and collect his winnings later (usually up to one year). This type of Keno game is subject to the wagering tax. Contact the Indian Tribal Governments specialist in your area with questions on 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 (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 IRC 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 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% of the the wager. Thus, if the gross wagers are \$1,000, the tax is \$2.50 (\$1,000 x .0025).
- If a wager is not authorized under the law of the state in which it is accepted, the rate of tax is 2% of the wager. Thus, if the gross wagers are \$1,000, the tax is \$20 (\$1,000 x .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 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. Check the “Final Return” box 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 must 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 they accept wagers 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. If a principal or agent does not have an EIN, they must apply for one by:

- Visiting www.irs.gov/ein and applying online;
- Calling 800-829-4933; or
- Mailing a completed [Form SS-4](#), Application for Employer Identification Number, 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 people are liable for the occupational tax. They must each file Form 11-C and pay the 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 gas stations through paid employees of the tribe. In the 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%. 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% 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	941	Mail	EFTPS		Sec IV
Employer	W-2	Mail/SSA BSO	N/A	Paper filing requires Form W-3	Sec IV
Employer	940*	Mail	EFTPS		Sec IV
All employees	FinCEN SAR	BSA E-Filing System			Sec II
Cash reporting	FinCEN CTR	BSA E-Filing System			Sec II
Pull-tabs etc.	730	Mail	EFTPS		Sec V
Pull-tabs etc.	11-C	Mail	EFTPS		Sec V
Resident vendor	1099-MISC	Mail/FIRE	EFTPS ¹	Paper filing requires Form 1096	Sec II
Nonresident vendor	1042-S	Mail/FIRE	EFTPS ²	Paper filing requires Form 1042-T	Sec II
Food/beverage	8027	Mail/FIRE	N/A	Paper filing requires Form 8027-T when multiple venues	Sec IV
*If not participating in a state unemployment program ¹Report on Form 945 if withholding required ²Report on Form 1042 if withholding required					

Patrons					
Recipient**	Form	Send to IRS		Comments	Reference
		Reporting	Payment		
Winnings to resident	W-2G	Mail/FIRE	EFTPS ¹		Sec VI
Prizes to resident	1099-MISC	Mail/FIRE	EFTPS ¹	Paper filing requires Form 1096	Sec VI
Winnings to nonresident	1042-S	Mail/FIRE	EFTPS ²	Paper filing requires Form 1042-T	Sec VI
Prizes to nonresident	1042-S	Mail/FIRE	EFTPS ²	Paper filing requires Form 1042-T	Sec VI
** Consult the OFAC SDN list prior to payment to ensure that it is not a prohibited transaction. If there are multiple winners or nominee winners, 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 wager results in a win (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 (for example, slot machines) and keno. Winnings (not reduced by the wager) from a bingo game or slot machine of \$1,200 or more are reportable gaming winnings. Winnings from a keno game (reduced by the wager) of \$1,500 or more are reportable gaming winnings.

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

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 the Reporting and Withholding Gaming Winnings section of this publication.

Identification Requirements

Form W-2G must contain the winner's name, address and Social Security number. It must also contain a general description of two types of valid identification (for example, driver's license, Social Security card or voter 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:

- Driver's license
- 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 TIN, they must perform backup withholding on the winnings. See page 27 for more information about backup withholding and Form 945 filing requirements.

The verification requirements for Form 1099-MISC are not the same as Form W-2G. While 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. One valid photo identification is 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 on winners who are foreign persons, see the section on Verifying Residency.

Report gambling winnings on Form W-2G if:

- The winnings (not reduced by the wager) from a bingo game or slot machine are \$1,200 or more;
- The winnings (reduced by the wager) from a keno game are \$1,500 or more;
- The winnings (reduced by the wager or buy-in) from a poker tournament are more than \$5,000;
- The winnings (except winnings from bingo, slot machines, keno and poker tournaments) reduced, at the option of the payer, by the wager are \$600 or more and at least 300 times the amount of the wager; or
- The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding).

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).

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.

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. In 2018 the winner would receive \$988 (\$1,300 gross winnings minus \$312 - federal income tax withheld at the rate of 2018 backup withholding rate of 24%). (Rates can change – check [irs.gov](https://www.irs.gov) for the current rate).

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.

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 proper identification to the game operator along with their TIN. If the TIN isn't provided, the game operator must withhold tax at the current backup withholding rate. See Section VI 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 24% of the winnings. The gaming operation reports the income tax withheld on Form 945. The winner receives \$721.24 (\$950 minus \$1 wager, less \$227.76 federal income tax withheld at the rate of 24% (\$949 x .24 = \$227.76)).

Wins of more than \$5,000 – 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 \$3,878.40 (\$5,100 gross winnings less \$1,221.60 withholding tax = computed \$5,100 minus \$10 wager, times 24%).

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 ¹	\$600
Bingo	\$1,200
Slot machines	\$1,200
Keno	\$1,500
¹ and at least 300 times the amount of the wager is subject to income tax withholding	

Multiple Winners – When paying out a win from a wagering activity, a tribal gaming operation needs to determine whether it's 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 obtain a completed [Form 5754](#), Statement by Person(s) Receiving Gambling Winnings. This form enables the tribal gaming operation to prepare Form W-2G. There are two parts to Form 5754. The 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 the 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 W-2G 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 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 in Section VI. Aggregate and report separate transactions involving the same patron onto a single form for the calendar year as shown by the following examples:

Example 1: Jim wins a television with a fair market value of \$800 in a drawing on January 17. On October 16 of the same year, Jim wins a cash door prize of \$300. Issue Form 1099-MISC to Jim for \$1,100.

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 who buys in with \$100 or more receives 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. Publication 5343, Helpful Hints for Indian Tribes and Tribal Entities to Avoid Penalties on Federal Tax Deposits and Information Returns, offers suggestions on how to avoid penalties and outlines what to do if the IRS assesses penalties.

Withholding

Tribal gaming operations making payment of certain gambling winnings must withhold tax from these payments. This is referred to as regular gambling withholding. The current rate for this withholding is 24%. The tribal gaming operation reports 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 state forms.

Withhold at the 24% rate if the winnings minus the wager are more than \$5,000 and are from:

- Sweepstakes;
- Wagering pools;
- Lotteries;
- Wagering transactions in a pari-mutuel pool with respect to horse races, dog races or jai alai, if the winnings are at least 300 times the amount wagered; or
- Other wagering transactions, if the winnings are at least 300 times the amount wagered.

Regular gambling withholding doesn't apply to winnings from bingo, keno or slot machines, nor does it apply to winnings from other wagering transactions if the winnings are \$5,000 or less. However, backup withholding may apply if the winner doesn't provide a TIN.

Regular gambling withholding applies to the total amount of gross proceeds, not merely the amount over \$5,000. View [About Form W-2G, Certain Gambling Winnings](#) for regular withholding rates on gambling winnings.

Tax Year Effective Date	Rate
2005 - 2017	25%
2018 - 2025	24%

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. The [Form W-2G instructions](#) for non-cash payments provides 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 are 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 withholding and backup withholding rates.

Tax Year Effective Date	Withholding Rate/Percentage	Backup Withholding Rate/Percentage
2005 - 2017	33.33%	38.89%
2018 - 2025	31.58%	31.58%

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

Backup 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, 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](https://www.irs.gov)).

Tax Year Effective Date	Rate/Percentage
2005 - 2017	28%
2018 - 2025	24%

Example 1: A tribal gaming operation owes a reportable pull-tab win of \$750 to a single ticket winner. The winner would only give their name and address. Since the winner failed to supply a TIN, the tribal gaming operation should collect backup withholding of \$180 (\$750 times 24%) and pay the winner \$570 (\$750 - \$180). If the winner had supplied their 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 1 and backup withholding on line 2. 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 table 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	\$1,200
Slot machines	N/A	\$1,200
Keno	N/A	\$1,500
Wagering transaction (\$5,000 or less)	N/A	\$600
Lotteries, sweepstakes, horse races, dog races, instant bingo game prizes/ pull-tabs and jai alai	\$5,000	\$600
Wagering transactions when winnings are at least 300 times the amount wagered	\$5,000	\$600

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 \$1,439.76 (\$6,000 prize-\$1 wager X 24%). Jack receives \$4,560.24 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

If the winning patron provides you a foreign address and no Social Security number you should withhold at 30% 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 Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

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

If the winner cannot provide a valid driver's license and Social Security number, then you should request other forms of identification, such as:

- 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 the winner does not have a Social Security number or a U.S. address, provide them with [Form W-8BEN](#), Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals). Usually nonresident aliens (commonly known as foreign persons) are visitors from other countries or are temporarily residing in the U.S. If the individual is a nonresident alien, use Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to report payments made to them.

Note: 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 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, these individuals and companies are called "Specially Designated Nationals." Their assets are blocked and U.S. persons are generally prohibited from dealing with them. Consult this list before making payments to nonresident aliens. 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. 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% unless the foreign country has a tax 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. TIN to receive this treatment. If a winner is from a treaty country but does not have a U.S. TIN, then withhold at 30% 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 to report payments made to nonresident aliens and required withholding. File Form 1042-T with paper Forms 1042-S. Submit these forms to the IRS 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.

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. 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](#), Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G, provides information on preparing files for upload through the FIRE System. You can use FIRE to file Forms 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 fewer than 250 information returns, then you can voluntarily use the FIRE System.

The benefits of using FIRE include:

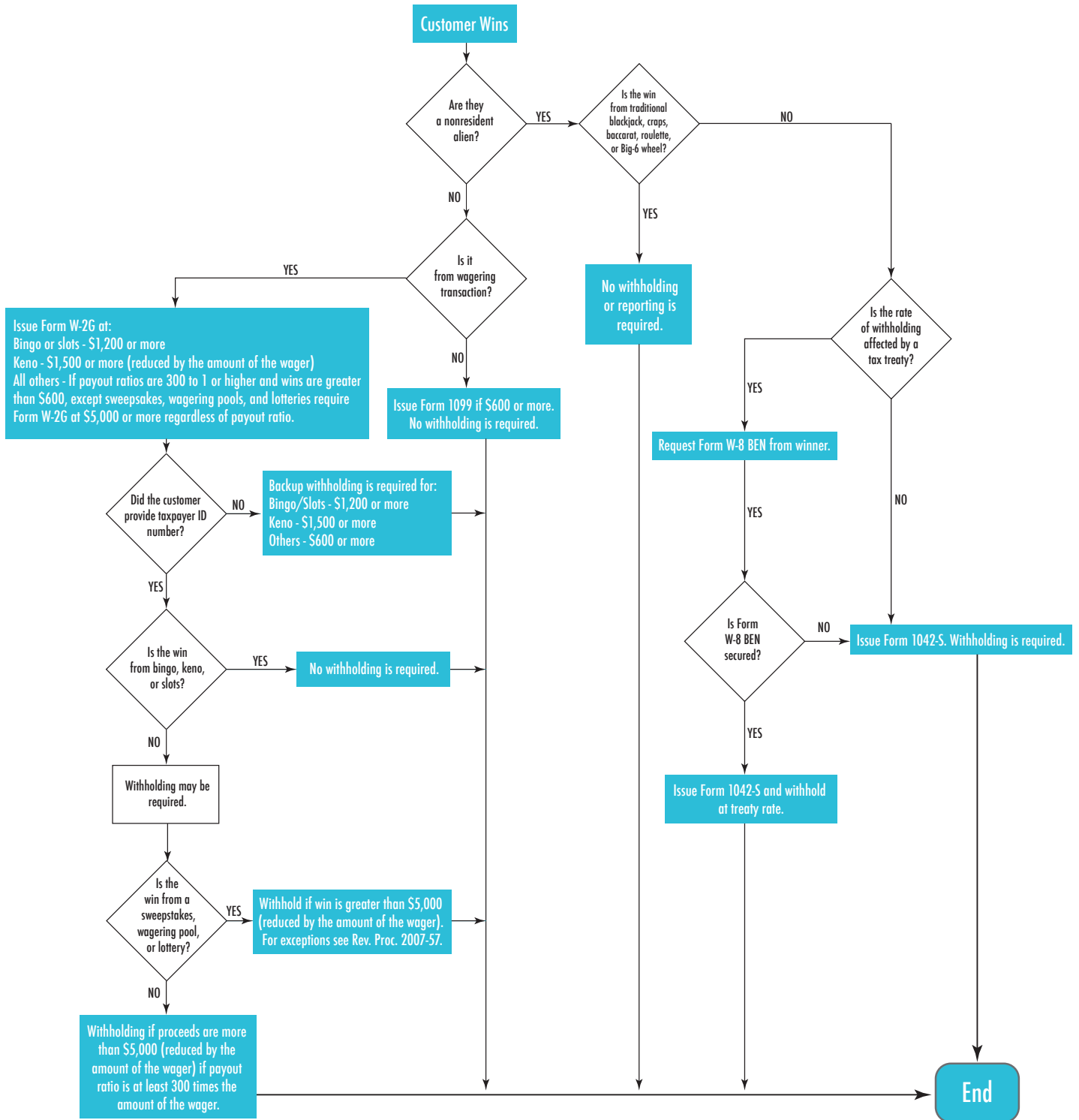
- It's paperless - no Form 4804 requirements
- It's a secure system that supports SSL 128-bit encryption
- It's easy to use
- It's efficient, with a 1-2 day notification of receipt of returns
- It's fast because transmission time is reduced by up to 95%
- It's flexible because due dates are extended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

To enroll, complete [Form 4419](#), Application for Filing Information Returns Electronically (FIRE), and mail it to IRS-Martinsburg Computing Center (MCC). You can also contact MCC toll-free at 866-455-7438 between 8:30 a.m. and 4:30 p.m. Eastern time 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 tournament with entry fee)		\$1,200			Yes	No
Bingo win (Bingo tournament with entry fee)		\$1,200			Yes	No
Keno win (IRC 4421(2)(A) applicable) ^{3, 5}			\$1,500		Yes	No
Keno win (IRC 4421(2)(A) not applicable) ^{4, 5}			\$1,500		Yes	Yes
Sweepstakes, lotteries, wagering pools (proceeds at least 300 times the amount wagered)			\$600		Yes	Yes (state conducted lotteries are exempt)
Sweepstakes, lotteries, wagering pools. Withholding required regardless of payout ratio				\$5,000	Yes	Yes (state conducted lotteries are exempt)
Wagering transactions with proceeds at least 300 times the amount wagered			\$600	\$5,000	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 at least 300 times the amount wagered			\$600	\$5,000	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 are at least 300 times the wager)			\$600	\$5,000	Yes	Yes
Pull-tabs			\$600	\$5,000	Yes	Yes ⁸
¹ Winnings proceeds must exceed \$5,000 after reduction of the amount wagered ² Payments made to nonresident aliens are subject to withholding and reporting on Form 1042-S (Proceeds from traditional blackjack, craps, roulette, baccarat or big 6-wheel are exempt from withholding and reporting) ³ Wagers placed, winners determined and disbursement of prizes made in the presence of all participants ⁴ Either advance wagers accepted 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						

Form W-2G must be issued for slot machine and bingo wins of \$1,200 or more and for keno wins of \$1,500 or more. Keno winnings from one game must 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 publications, forms and instructions that cover gaming law topics:

- [Publication 15](#), (Circular E) Employer's Tax Guide
- [Publication 15-A](#), Employer's Supplemental Tax Guide
- [Publication 509](#), Tax Calendars
- [Publication 510](#), Excise Taxes
- [Publication 515](#), Withholding of Tax on Nonresident Aliens and Foreign Entities
- [Publication 531](#), Reporting Tip Income
- [Publication 966](#), Electronic Federal Tax Payment System, A Guide to Getting Started
- [Publication 1771](#), Charitable Contributions - Substantiation and Disclosure Requirements
- [Publication 4132](#), EFTPS Online Factsheet
- [Publication 4268](#), Employment Tax for Indian Tribal Governments
- Annual Instructions for Forms [1099](#), [1098](#), [W-2G](#), [8027](#), [1042-S](#)
- [Title-31-Bank Secrecy Act tool](#)
- [Tip Income Reporting tool](#)
- [Gaming Information Return Reporting tool](#)
- [Employment Tax Videos for ITG](#)

You can view tax-related information and download most publications and forms at [IRS.gov](https://www.irs.gov), or you can order them at no charge by calling 800-829-3676.

Reporting Abuses/Schemes

IRS 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 email at tege.itg.schemes@irs.gov.

Customer Service Assistance

Visit [IRS.gov/tribes](https://www.irs.gov/tribes) for tribal tax law information, call toll-free for assistance, or write or email our office with your questions.

- Indian Tribal Governments
SE:T:GESS:ITG
Internal Revenue Service
1111 Constitution Avenue, NW,
Washington, DC 20224
- 877-829-5500
- Email: tege.ask.itg@irs.gov