



Tax Exempt and Government Entities
INDIAN TRIBAL GOVERNMENTS



Helpful Hints for Indian Tribes and Tribal Entities to Avoid Penalties on Federal Tax Deposits and Information Returns

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This guide is designed to assist tribal entities in understanding federal tax deposit laws to avoid or minimize potential penalties. It is not all inclusive, and your local Indian Tribal Governments (ITG) specialist is available to answer your questions.

Receive



Receiving a Notice From the IRS

Tribal governments or tribal entities occasionally receive notices from the Internal Revenue Service (IRS) for reasons including failure to deposit payroll taxes timely and late filing or non-filing of returns. If you receive a notice from the IRS, the two most important things to do are:

- Review your records to determine if the notice is correct, and
- Respond to the notice by the due date.

Review

If you don't respond timely, you can be subject to penalties and interest. If you don't review your records to ensure that the notice is correct, you may make unnecessary payments. If you determine the notice is correct and you owe additional tax, penalties, and interest, make the payment within the time frame shown in the notice.

ITG specialists and other IRS personnel are ready to assist you in understanding the notices, determining their accuracy, and resolving issues. You can also contact Customer Account Services toll-free at **877-829-5500**. The call center is open Monday through Friday, 8:00 a.m. to 5:00 p.m. local time.

Respond





SSA and IRS Reconciliation Processes

The Social Security Administration (SSA) maintains a record of total Social Security and Medicare wages and tips paid by each employer to its employees and provides this information to the IRS. The IRS compares these amounts to the amounts of wages and tips the employer reports to the IRS on Forms 941, Employer's Quarterly Federal Tax Return. If the reports are inconsistent, the IRS and the SSA may contact employers for an explanation of the discrepancy and request additional wage evidence.

- The IRS contacts employers who reported more wages to the SSA than to the IRS.
- The SSA contacts employers who reported more wages to the IRS than to the SSA.

If these discrepancies are not resolved, the IRS may assess penalties for filing incorrect reports.

When more wages are reported to the IRS than to the SSA, the SSA is concerned that employees' earnings are not correctly reflected in SSA records. The SSA examines some of these cases and tries to resolve the difference without contacting the employer.

If the SSA can't resolve the difference, they will send the employer a notice and a questionnaire requesting additional earnings data. If the employer doesn't respond within 120 days, the SSA sends a second notice. If the employer doesn't respond to the second notice, the IRS will contact the employer and possibly impose penalties.

Contact

Comparing Forms 941 to Form W-3

You should compare all your Form 941 reports to your Form W-3, Transmittal of Wage and Tax Statements, for the year. If these amounts do not match, recheck records and identify necessary adjustments. This will help you identify and resolve errors in your records to avoid filing erroneous reports.

Identify any over or underreporting of income or wages and adjust any overpayment or underpayment of taxes on the Form 941 for the erroneous quarter. For example, a reporting error discovered during a subsequent quarter would be corrected on Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund.

Use the following worksheet to assist you with this reconciliation.

Forms 941, W-2 and W-3 Reconciliation

- Annual amounts from payroll records should match the total amounts reported on all Forms 941 for the year.
- Total amounts reported on all Forms 941 for the year should match the sum of the same data fields shown in the W-3 totals.
- For more information, see “Reconciling Forms W-2, W-3, and 941 or 944” in section 12 of [Publication 15](#), (Circular E) Employer’s Tax Guide.
- If these amounts do not match, recheck the records and identify necessary adjustments.

column a	column b	column c	column d	column e	column f	column g
Comparison Area	941 Line #	Form 941 (all 4 quarters)	W-2, W-3 Box #	W-2s (total of all forms)	Amount on W-3	Difference (col c minus column e)
Compensation	Line 2		Box 1			
Federal income tax	Line 3		Box 2			
Social Security wages	Line 5a Column 1		Box 3			
Social Security tips	Line 5b Column 1		Box 7			
Social Security tax	Line 5a + 5b Column 2					
Social Security tax comparison computation	Line 5a + 5b (Column 2) divided by 2		Box 4			
Medicare wages	Line 5c Column 1		Box 5			
Medicare tax	Line 5c Column 2					
Medicare tax comparison computation	Line 5c (Column 2) divided by 2		Box 6			



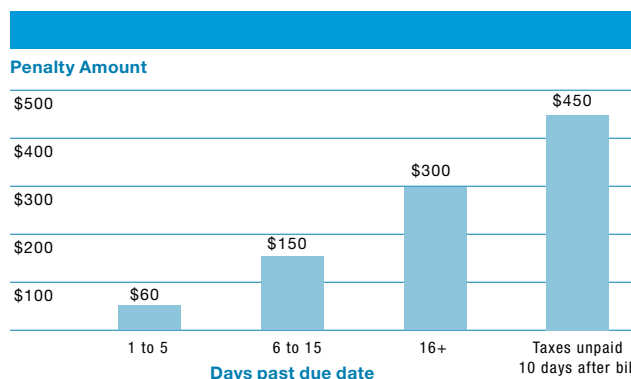
The Basics of Federal Tax Deposits

When you pay your employees, you do not pay them all the money they earned. As their employer, you have the added responsibility of withholding taxes from their paychecks. The income tax and employees' share of Social Security and Medicare taxes that you withhold from your employees' paychecks are part of their wages you pay to the U.S. Treasury instead of to your employees. These are commonly called trust fund taxes.

Through this withholding, your employees pay their contributions toward Social Security and Medicare benefits and the income taxes withheld reported on their tax returns. Your employees' trust fund taxes, along with your matching share of Social Security and Medicare taxes, are paid to the Treasury through the Electronic Federal Tax Payment System (EFTPS).

Congress has established large penalties for delays in turning over your employment taxes to the Treasury. For more information, refer to [Publication 15](#), (Circular E), Employer's Tax Guide.

To illustrate the cost of making your federal tax deposits late, review the bar chart. This example shows how quickly a failure to deposit penalty on a \$3,000 deposit grows.



The failure to deposit (FTD) penalty is computed by multiplying the amount of underpaid deposit by a penalty percentage rate based on how many days the deposit is late. The penalty rates are shown in this table.

Failure to Deposit Penalty Percentage Rates	
Cause for Penalty	Penalty Percentage Rate
Deposits made 1-5 days late	2%
Deposits made 6-15 days late	5%
Deposits made 16 + days late	10%
Taxes unpaid after the 10th day following the first IRS bill	15%
Amounts subject to electronic deposit requirements but not deposited via EFTPS	10%

In addition to deposit penalties, you will also be subject to penalties if you file your Form 941 after the due date, generally the last day of the month that follows the end of the quarter, or don't pay the amount shown as tax on the return.

	Rate	Maximum
Late filed return	5% per month of unpaid tax	25%
Late paid tax	½% per month of unpaid tax, then 1% after Notice of Intent to Levy	25%

Review your payroll procedures to determine if you're making timely deposits.

Who Must Make Deposits?

Deposits are **required** if you file Form 941 and report \$2,500 or more in taxes per quarter.

What Taxes Must You Deposit?

- Income tax withheld from your employees.
- FICA (Social Security and Medicare) tax withheld from your employees – the employee's share.
- FICA (Social Security and Medicare) tax – the employer's share.

Important Difference

- Making deposits and filing employer returns with payments are not the same.
- Taxes are reported by filing a return (such as a Form 941) and **paid** by depositing the money with the Treasury.

When Should You Make Form 941 Tax Deposits?

- If your total taxes for the quarter are less than \$2,500, you can pay them with the return or deposit them by the return due date.
- If your total taxes on Form 941 are \$2,500 or more, you'll need to determine which deposit schedule to follow (monthly or semiweekly).
- To ensure that you don't file and pay late, make a deposit the **same day** you make payroll or **no later than the deposit due date**.

For further explanation of when to make a deposit, see [Publication 15](#).

Deposit Schedule Exceptions

Business Days

- If your deposit is due on a federal or state bank holiday, Saturday or Sunday, make it by the close of the next business day.

\$100,000 Next-Day Deposit Rule

- If your tax liability is **\$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.
- Once you meet the \$100,000 next-day rule, you must follow the semiweekly schedule for all deposits less than \$100,000. You are a semiweekly schedule depositor for the rest of the current and next calendar year.
- Since banks usually need **24 hours to make the deposit**, you should request the deposit the same day you accumulate the liability (**before close of the business day**).
- Attach Schedule B to the Form 941 when filed.

For purposes of the \$100,000 rule, do not continue accumulating a tax liability after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated a liability of \$95,000 on a Tuesday (of a Saturday-through-Tuesday deposit period) and accumulated a \$10,000 liability on Wednesday, the \$100,000 next-day deposit rule does not apply. Thus, \$95,000 must be deposited by Friday and \$10,000 must be deposited by the following Wednesday.

However, once you accumulate at least \$100,000 in a deposit period, stop accumulating at the end of that day and begin to accumulate anew on the next day.

Example: Fir Co. is a semiweekly schedule depositor. On Monday, Fir Co. accumulates taxes of \$110,000 and must deposit this amount on Tuesday, the next business day. On Tuesday, Fir Co. accumulates additional taxes of \$30,000. Because the \$30,000 is not added to the previous \$110,000 and is less than \$100,000, Fir Co. must deposit the \$30,000 by Friday (following the semiweekly deposit schedule).

Example: Elm, Inc., started its business on April 1. On April 11, it paid wages for the first time and accumulated a tax liability of \$40,000. On Friday, April 18, Elm paid wages and accumulated a liability of \$60,000, bringing its accumulated tax liability to \$100,000. Because this was the first year of its business, the tax liability for its lookback period is considered to be zero, and it would be a monthly schedule depositor based on the lookback rules. However, since Elm accumulated a \$100,000 liability on April 18, it became a semiweekly schedule depositor on April 19. It will be a semiweekly schedule depositor for the remainder of the year and the next year. Elm must deposit the \$100,000 by Monday, April 21, the next business day. For an explanation of the lookback period see [Publication 3151-A](#), Resource Guide for Understanding Federal Tax Deposits, or [Publication 15](#).

Avoid Failure to Deposit Penalties

Make deposits on or before the deposit due date.

- Make your deposit any time on or after the date the liability is incurred and on or before the deposit due date.
- You are not required to wait until the due date nor will you receive a penalty for making deposits prior to the due date.
- For deposits made by EFTPS, you must initiate the transaction by 8 p.m. Eastern time **one business day before the date the deposit is due.**
- For accumulated tax liabilities of **\$100,000 or more on any day** during a deposit period, deposit the tax by the **NEXT business day.**

Include a summary of your tax liability with Form 941.

- Monthly depositors use Part 2 of Form 941.
- Semiweekly depositors use Schedule B, Employer's Record of Federal Tax Liability.



How to Avoid an “Averaged” Failure-to-Deposit Penalty

IRS may assess an “averaged” failure-to-deposit (FTD) penalty of 2% to 10% if you are a monthly schedule depositor and did not properly complete the monthly liability section (Part 2) of Form 941 when your total adjusted tax liability shown on Form 941 equaled or exceeded \$2,500.

IRS may also assess an “averaged” FTD penalty of 2% to 10% if you are a semiweekly schedule depositor and your total adjusted tax liability shown on Form 941 equaled or exceeded \$2,500 and you:

- Complete the monthly liability section (Part 2) of Form 941 instead of Schedule B on Form 941,
- Fail to attach a properly completed Schedule B, or
- Improperly complete Schedule B (for example, by entering tax deposits instead of tax liabilities in the numbered spaces).

The “averaged” FTD penalty is computed by taking your total adjusted tax liability shown on Form 941 and distributing it equally throughout the tax period. As a result, your deposits and payments may not be counted as timely because the actual dates of your tax liabilities cannot be accurately determined.

You can avoid an “averaged” FTD penalty by reviewing your return prior to filing it. Follow these steps before submitting your Form 941:

- If you’re a **monthly schedule depositor**, report your tax liabilities (not your deposits) in the monthly liability section (Part 2) of Form 941. Verify that your total liability for the quarter on Part 2 equals your taxes after adjustments and credits shown on the front of Form 941.
- If you’re a **semiweekly schedule depositor**, report your tax liabilities (not your deposits) on Schedule B (Form 941) in the lines that represent the dates you paid your employees. Verify that your total liability on the bottom of Schedule B equals your taxes after adjustments and credits shown on the front of Form 941.
- Do not show negative amounts in the monthly liability section of Schedule B (Form 941).
- For prior period errors, don’t adjust your tax liabilities reported on Form 941 or on Schedule B with your current period return. Instead, file an adjusted return (Form 941-X or 944-X) if you’re also adjusting your tax liability. If you’re only adjusting your deposits in response to an FTD penalty notice, see the [Instructions for Schedule B \(Form 941\)](#).

Schedule B (Form 941) Penalties

The IRS uses Schedule B (Form 941) to determine if you deposited your federal employment tax liabilities on time. If you do not properly complete and file your Schedule B with Form 941, IRS may propose an “averaged” failure-to-deposit penalty. See “Deposit Penalties” in section 11 of [Publication 15](#) for more information.

Who Must File Schedule B?

File Schedule B if you are a:

- Semiweekly schedule depositor, or
- Monthly schedule depositor who accumulated a tax liability of \$100,000 or more on any given day in the reporting period.

Completing the Schedule B Correctly

On Schedule B (Form 941), list your tax liability for each payroll date, including:

- The federal income tax you withheld from your employees’ payroll, and
- Both employee and employer share of Medicare and Social Security taxes.

The Most Common Errors and Reasons for Schedule B Penalties Are

- Failure to include a Schedule B when required.
- Reporting the date and amount of the **deposits** on Schedule B rather than the amount of the **tax liability** on the date the liability was incurred.
- The total **tax after adjustments and credits** on the **front of Form 941** does not match the **total liability for the quarter** reported **on Schedule B**.

The example on the following page shows the Schedule B (Form 941) for XYZ Tribe, a semiweekly depositor, for the last quarter of 2018. The \$100,000 deposit rule applies to XYZ Tribe for all deposits for this quarter. Therefore, XYZ Tribe must make all deposits by the next business day.

Schedule B (Form 941):

Report of Tax Liability for Semiweekly Schedule Depositors

(Rev. January 2017)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

Employer identification number (EIN)

1 2 - 3 4 5 6 7 8 9

Name (not your trade name)

XYZ Tribe

Calendar year

2 0 1 8

(Also check quarter)

Report for this Quarter...

(Check one.)

- ☐ 1: January, February, March
☐ 2: April, May, June
☐ 3: July, August, September
☒ 4: October, November, December

Use this schedule to show your TAX LIABILITY for the quarter; don't use it to show your deposits. When you file this form with Form 941 or Form 941-SS, don't change your tax liability by adjustments reported on any Forms 941-X or 944-X. You must fill out this form and attach it to Form 941 or Form 941-SS if you're a semiweekly schedule depositor or became one because your accumulated tax liability on any day was \$100,000 or more. Write your daily tax liability on the numbered space that corresponds to the date wages were paid. See Section 11 in Pub. 15 for details.

Month 1

1		9		17		25	
2	145,054 . 89	10		18		26	
3		11		19		27	
4		12		20		28	
5		13		21		29	
6		14		22		30	165,397 . 43
7		15		23		31	
8		16	134,987 . 78	24			

Tax liability for Month 1

445,440 . 10

Month 2

1		9		17		25	
2		10		18		26	
3		11		19		27	165,987 . 98
4		12		20		28	
5		13	176,654 . 43	21		29	
6		14		22		30	
7		15		23		31	
8		16		24			

Tax liability for Month 2

342,642 . 41

Month 3

1		9		17		25	
2		10	187,678 . 87	18		26	
3		11		19		27	
4		12		20		28	
5		13		21		29	
6		14		22		30	
7		15		23		31	
8		16		24	166,987 . 90		

Tax liability for Month 3

354,666 . 77

Fill in your total liability for the quarter (Month 1 + Month 2 + Month 3) ▶

Total must equal line 12 on Form 941 or Form 941-SS.

Total liability for the quarter

1,142,749 . 28

For Paperwork Reduction Act Notice, see separate instructions.

IRS.gov/form941

Cat. No. 11967Q

Schedule B (Form 941) (Rev. 1-2017)

10	Total taxes after adjustments. Combine lines 6 through 9	10	1,142,749 . 28
11	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11	
12	Total taxes after adjustments and credits. Subtract line 11 from line 10	12	1,142,749 . 28
13	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter	13	1,186,749 . 70
14	Balance due. If line 12 is more than line 13, enter the difference and see instructions	14	
15	Overpayment. If line 13 is more than line 12, enter the difference	15	44,000 . 42

Check one: ☒ Apply to next return. ☐ Send a refund.

▶ You MUST complete both pages of Form 941 and SIGN it.

Next ▶

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.

Cat. No. 17001Z

Form 941 (Rev. 1-2018)

Total must equal line 12 of 941!



How to Respond to Notices and Avoid Information Return Penalties

The IRS will send a Notice 972CG, Notice of Proposed Civil Penalty, if you file a Form 1099 or W-2G with a missing or incorrect name and taxpayer identification number (TIN) combination. A name and TIN combination is incorrect when it doesn't match or can't be found on the IRS Social Security and employer identification numbers files. Notice 972G proposes a penalty of \$270 (adjusted annually for inflation) for each return you did not file correctly. Compare the list with your records to determine:

- **If you took appropriate action to meet the requirements for reasonable cause, and**
- **If you must make an annual solicitation in the current year to avoid penalties in future years.**

For more information on Notice 972CG and annual solicitations, see [Publication 1586](#), Reasonable Cause Regulations & Requirements for Missing and Incorrect Name/TINs. Refer to [Treasury Regulation Section 301.6724-1](#) for reasonable cause guidelines.

One way to get the necessary information and avoid penalties is to use a [Form W-9](#), Request for Taxpayer Identification Number and Certification, or an acceptable substitute, to get the payee's correct name and TIN. If a payee's TIN is not on record at the time a reportable payment is made, backup withholding is generally required.

The payee may use the Form W-9 to certify that the payee's TIN is correct and that the payee is a U.S. person. The payee may also provide information about the type of business entity it is, which will help you determine if you are required to file an information return. The payee signs the form under penalty of perjury. Payees may be liable for penalties for failure to furnish the TIN or for providing false information.

A payee who is an individual should generally include a Social Security number (SSN) on the Form W-9. An individual payee must furnish the name shown on his or her personal income tax return, even though the individual may also provide a business name.

A payee who is not an individual (such as a corporation) should enter its business name as shown on federal tax documents on line 1 on the Form W-9. If the payee entity has a "doing business as" (dba) name, it may be listed on the second line. The entity should include its EIN in part 1 of Form W-9.

A name/TIN combination is unique. It is considered incorrect when it doesn't match or can't be found on IRS files that contain names and TINs. Partnerships and corporations must use an EIN. A limited liability company (LLC) may be treated for tax purposes as a disregarded entity, a partnership or a corporation. A single-member LLC that is disregarded as an entity separate from its owner, must

provide the SSN (or EIN, if the owner has one). Do not enter the EIN of the disregarded entity. Refer to Form W-9 and its instructions for additional information on the proper name and number combinations to complete the form.

U.S. resident aliens who are not eligible to receive an SSN must apply for an individual tax identification number (ITIN) on Form W-7, Application for IRS Individual Taxpayer Identification Number. Individuals who have an ITIN may also use Form W-9.

The IRS will issue a CP2100 or CP2100A Notice if the payee's name and TIN on the information return filed does not match IRS records.

This notice is informing you as the payer, that you may be responsible for beginning backup withholding, if you haven't already done so. Backup withholding should begin immediately if the payee refuses or fails to provide a TIN, or if the TIN provided is obviously incorrect (not 9 digits or contains something other than a number). The CP2100/2100A Notice is accompanied by a listing of missing, incorrect or not currently issued payee TINs. [Publication 1281](#), Backup Withholding on Missing and Incorrect Name/TIN(s), provides additional information on backup withholding.

Backup Withholding Will Apply If

- 1) The payee fails to furnish their SSN or TIN, or
- 2) The IRS notifies you to impose backup withholding because the payee furnished an incorrect TIN.

Tips for Getting “Good” TINs

- Always secure a contractor's TIN before paying for services.
- Avoid abbreviating company names.
- If possible, use the same name as it appeared on the original application for an EIN (Form SS-4) or Social Security card.
- If you know a company has changed its name, ask if they informed the IRS. The IRS and SSA must be informed of any name changes.
- When filing Form 1099-MISC for a sole proprietor, always put the individual's name first, followed by the business name. For example, Joe's Garage should be reported as Joseph Johnson, DBA Joe's Garage.
- The best tool to help you gather information on contractors and vendors, including the payee's names, TINs and exempt status, is Form W-9.

You can find more information on backup withholding in [Publication 1281](#), Backup Withholding for Missing and Incorrect Name/TIN(s). For additional information on how to fill out a Form W-9, see the Form W-9 [instructions](#). Keep the Forms W-9 in your files in the event the IRS requests verification of the name/TIN listed on a Form 1099.

If you have questions about withholding, information reporting, Forms 1099, or the CP2100 or CP2100A Notices and listings, you may call your local ITG specialist or Martinsburg Computing Center Information Reporting Program Customer Service section at 866-455-7438 (toll-free). The telecommunication device for the deaf number is 304-267-3367 (not a toll-free number). The phones are open 8:30 a.m. to 4:30 p.m. Monday through Friday, Eastern time. In addition, you may email your question to mccirp@irs.gov.

What Should You Do if You Receive a CP2100 or CP2100A (Backup Withholding) Notice?

Compare the listing with your records.

For missing TINs: If you haven't started backup withholding, begin to do so immediately and continue until you receive a TIN. You must make up to three solicitations for the TIN (initial, first annual, second annual) to avoid a penalty for failing to include a TIN on the information return.

For incorrect TINs: Compare the accounts on the listing with your business records. See Publication 1281 for the solicitation requirements to avoid a penalty for failure to include the correct TIN on an information return. If they agree, send the appropriate "B" Notice to the payee. If an account doesn't agree, it could be the result of a recent update to SSA records, an error in the information you submitted, or an IRS processing error. If this type of error occurred, the only thing you should do is correct or update your records, if necessary.

A "B" Notice is a backup withholding notice. There are two "B" Notices – the First "B" Notice and the Second "B" Notice. You must send the First "B" Notice and a Form W-9 to a payee after you receive the first CP2100 or CP2100A Notice with respect to this account for soliciting a correct name/TIN combination. You must send the Second "B" Notice to a payee after you receive a second CP2100 or CP2100A Notice within a three-calendar year period. The text of the Second "B" Notice tells the payee to contact the IRS or SSA to obtain the correct name/TIN combination. The mailing of the second notice should not include a Form W-9. See Publication 1281 for additional information on the First and Second "B" Notices.

The table on the following page is a quick reference should you receive a CP2100 or CP2100A Notice on backup withholding.

What's the problem?	Compare the IRS listing to your records and...	Then...
Missing TINs	Begin or continue backup withholding immediately.	Solicit TIN from Payee: <ol style="list-style-type: none"> 1. Initially (when payment was made). 2. First annual solicitation by December 31 of the year payment is made. 3. Second annual solicitation by December 31 of the following year.
Incorrect TINs	<p>► If they agree (the TIN/name combination on the list match the W-9, W-2G, or other documents in your records).</p>	Send the First or Second "B" Notice to the Payee: <ol style="list-style-type: none"> 1. You have 15 business days to send a "B" Notice to a payee; include a Form W-9. 2. Backup withhold from any reportable payments if the payee certification is not returned to you within 30 days after you receive the CP2100/2100A. 3. Do not backup withhold if the payee furnishes the required certification within 30 days of the date you received the notice of the missing or incorrect TIN. (Form W-9 in response to the First "B" notice; or a copy of a Social Security card with a name and SSN combination that differs from the name and SSN combination on the Second "B" Notice, a Social Security card with a date that is no earlier than six months prior to the date of the Second "B" Notice, or IRS letter 147C in response to the Second "B" Notice). 4. Keep these documents on file to show you met the requirements for reasonable cause when the proposed missing or mismatch penalty notices are sent. 5. The Second "B" Notice should be sent to the payee if this is the second CP2100/2100A Notice you received within three calendar years for this payee.
	<p>► If they do not agree, it could be because:</p> <ol style="list-style-type: none"> 1. You put the incorrect information on the return. 2. The information changed after you filed it. 3. IRS misprinted the information in processing. 	<ol style="list-style-type: none"> 1. Correct and update your records. 2. Use the correct TIN/name information for future filings. 3. Make a note of the error in your records.

Following and documenting these procedures is very important to establishing "reasonable cause," which is a defense when IRS assesses information return penalties for missing and incorrect TINs.