

Proposed Revised Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry

Announcement 2000-21

The Internal Revenue Service is expanding its Tip Rate Determination/Education Program (TRD/EP), which is designed to enhance tax compliance among tipped employees through taxpayer education and voluntary advance agreements instead of traditional audit techniques. This announcement solicits comments on a draft agreement entitled Tip Reporting Alternative Commitment (For use in the cosmetology and barber industry).

OVERVIEW

The Service developed its TRD/EP in 1993 as a means of enhancing tax compliance while reducing taxpayer burden. In essence, the TRD/EP envisioned that the Service and taxpayers in industries in which tipping is common would work together to improve tax compliance. The TRD/EP currently offers employers the opportunity of entering into one of two types of agreements. The Tip Rate Determination Agreement (TRDA) requires the determination of tip rates; the Tip Reporting Alternative Commitment (TRAC) agreement emphasizes education and tip reporting procedures. The agreements also set forth an understanding that employers that comply with the terms of the agreement will not be subject to challenge by the Service. The TRDAs set forth similar understandings with respect to employees who participate in the agreements. Although not set forth in the TRAC agreements, employees who properly report tips also will not be subject to

challenge by the Service. The decision to enter into either a TRDA or a TRAC agreement is entirely voluntary on the part of the employer.

In 1997, the Service developed a TRAC agreement for use in the hair-styling industry. The industry has expressed interest in making the TRAC agreement available to the entire cosmetology and barber industry. The industry has also advised the Service that a substantial portion of the industry includes independent contractors who pay a booth rental for use of space.

To ensure consistency in the agreements offered to taxpayers and to provide an opportunity for public comment before making agreements available for use, a revised TRAC agreement is attached to this announcement. The revised agreement addresses workers who are booth renters and other independent contractors and will be available to the entire industry. The Service requests comments from the industry regarding the inclusion of booth renters and other independent contractors.

The Service plans to allow electronic systems (including point-of-sale systems) to satisfy the TRAC education requirement. The Service requests comments on what information the system must provide to employees to satisfy the education requirement.

COMMENTS

Written comments must be received by July 7, 2000. Send submissions to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 2000-21), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8

a.m. and 5 p.m. to: Specialty Taxes, c/o CC:DOM:CORP:R (Ann. 2000-21), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslst.html.

OTHER TRDA AND TRAC AGREEMENTS

The Service is simultaneously proposing by announcement in this Internal Revenue Bulletin four other agreements: (1) a revised TRAC agreement for use in the food and beverage industry (Announcement 2000-22), (2) a revised TRDA for use in the food and beverage industry (Announcement 2000-23), (3) a new TRAC agreement for use in industries, other than the food and beverage industry and the cosmetology and barber industry, in which tipped employees receive both cash and charged tips (Announcement 2000-19), and (4) a new TRDA for use in any industry other than the food and beverage industry and the gaming industry (Announcement 2000-20).

DRAFTING INFORMATION

The principal author of this announcement is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this announcement, contact Don Segal of the Office of Specialty Taxes on (202) 622-4177 (not a toll-free call).

TIP REPORTING ALTERNATIVE COMMITMENT

(For use in the cosmetology and barber industry)

between

Department of the Treasury—Internal Revenue Service

and

_____ [Name of Business]

This Tip Reporting Alternative Commitment (TRAC) agreement is part of the Tip Rate Determination/Education Program that the Internal Revenue Service implemented in 1993 to promote tip reporting compliance by employees in accordance with the Internal Revenue Code of 1986.

For federal income tax purposes, taxpayers are required to report to the IRS all income from all sources, unless the income is expressly excluded. Under section 61(a)(1) of the Code, gross income includes compensation for services, including tips. Under section 61(a)(2), gross income includes all income from business.

Section 6053(a) of the Code requires employees to furnish one or more written statements to their employers reporting all tips received in each calendar month. The statements must be furnished to the employer by the 10th day of the following month.

I. DEFINITIONS

A. *Service Representative* means the Internal Revenue Service employee or delegate authorized to execute or terminate this TRAC agreement on behalf of the Internal Revenue Service.

B. *Business* means _____
[insert name, address, and EIN].

C. *Establishment* means each of the establishments or divisions listed by name, address, and identifying number in Attachment A [sample attached].

1. *One place of business*. If the Business has one place of business, that place of business is an Establishment, and no attachment is necessary.

2. *Additional establishment*. If the Business subsequently wishes to include an additional establishment in this TRAC agreement, the Business must notify the Service Representative in writing. The notification must include the name, address, and identifying number of the additional establishment.

D. *Employee* means a person employed by the Establishment who directly or indirectly receives tips of at least \$20.00 per month during the course of the employee's employment.

E. *Booth Renter* means a person who rents a booth from the Business for a fee, receives and retains all fees from customers, generally selects his or her own customers, and generally sets his or her own work schedule.

F. *Independent Contractor* means a person who is neither an Employee nor a Booth Renter, but who performs services at an Establishment and meets the standards of an independent contractor with respect to that establishment.

II. COMMITMENT OF BUSINESS

A. *Commitment with respect to Employees*.

1. *Education*.

a. *New Employees*. The Business will establish and maintain an educational program to train newly hired Employees that the law requires employees to report monthly their cash and charged tips to their employer. At a minimum, the program will give each Employee—

i. A short oral explanation of the reporting requirements and the records maintenance requirements. The material in IRS Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, is suitable for this purpose;

ii. Written informational materials, which may include any of the following IRS documents: Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, Publication 531, *Reporting Tip Income*, and Publication 3148, *Tips on Tips* for employees; and

iii. An explanation of the Business's tip reporting procedures.

b. *Existing Employees*. The Business will establish and maintain a quarterly education program for existing Employees.

2. *Employee tip-reporting procedures*. Each Establishment will establish a procedure or procedures under which a written or electronic statement is prepared and processed on a regular basis (no less frequently than monthly), reflecting all tips for services attributable to each Employee. These procedures are to enable Employees to meet their reporting requirements under section 6053(a) of the Code. The Business or Establishment may provide different procedures for cash and charged tips, as well as for directly tipped and indirectly tipped Employees. IRS Publication 3144, *Tips on Tips* for employers, includes an example of an acceptable TRAC statement that an employer can use for both directly and indirectly tipped Employees.

B. Educational commitment with respect to Booth Renters and Independent Contractors.

1. *New Booth Renters and Independent Contractors.* The Business will give each new Booth Renter or Independent Contractor a copy of Publication 531, *Reporting Tip Income*, and a copy of Publication 3518, *Beauty Industry Federal Tax Guidelines*.

2. *Existing Booth Renters and Independent Contractors.* At the end of each calendar year, the Business will provide a copy of Publication 531 and Publication 3518 to each Booth Renter and Independent Contractor who performed services on the Business's premises at any time during the calendar year.

C. Returns, taxes, and records.

1. *Filing returns and paying and depositing taxes.* The Business (or employing Establishment) will comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes.

2. *Maintaining records.* Each Establishment will maintain records of the following:

- a. Gross receipts subject to tipping, and
- b. Charge receipts showing charged tips.

The Business will retain these records for at least 4 years after the April 15 following the calendar year to which the records relate.

3. *Making records available.* Upon the request of the Service Representative, the Business will make the following quarterly totals available, by Establishment, for statistical samplings of its Establishments:

- a. Total charged tips,
- b. Charge receipts showing charged tips,
- c. Total tips reported, and
- d. Gross receipts subject to tipping.

III. COMMITMENT OF INTERNAL REVENUE SERVICE

A. *Tip examinations.* The IRS will not initiate any tip examinations of the Business (or Establishment) for any period for which this TRAC agreement is in effect.

B. *Section 3121 (q) notice and demand.* Any section 3121 (q) notice and demand issued to the Business (or Establishment) relating to any period during which this TRAC agreement is in effect will be based solely on amounts reflected on—

1. Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, filed by an Employee with his or her Form 1040, or

2. Form 885-T, *Adjustment of Social Security Tax on Tip Income Not Reported to Employer*, prepared at the conclusion of an employee tip examination.

C. *Compliance review.* The IRS may evaluate the Business for compliance with the provisions of this TRAC agreement.

D. *Assistance.* Upon request, the IRS will assist any Business or Establishment in establishing, maintaining, or improving its educational program or tip reporting procedures.

IV. TERMINATION OF AGREEMENT

A. *Termination by Business.* If the Business no longer wishes this TRAC agreement to apply to one or more Establishments, the Business may terminate this TRAC agreement with respect to the Establishment(s) by providing written notification to the Service Representative identifying the Establishment(s). If the termination applies to all the Establishments of the Business, the TRAC agreement will be terminated.

B. *Termination by Internal Revenue Service.* The IRS may terminate this TRAC agreement only if—

1. The IRS determines that the Business (or any Establishment) has failed to substantially comply with section II.A (pertaining to the Business's commitment with respect to employees);

2. The Business (or any Establishment) fails to meet any of the requirements of section II.C (pertaining to filing returns and paying and depositing taxes, maintaining records, and making records available) or II.D (pertaining to Booth Renter and Independent Contractor information); or

3. The IRS pursues an administrative or judicial action relating to the Business, Establishment, or any other related party to this TRAC agreement.

C. *Effective date of termination.* Except for a termination described in section IV.B.1, any termination will be effective the first day of the first calendar quarter after the terminating party notifies the other party in writing. In the case of a termination under section IV.B.1, the Service Representative may elect an earlier termination date, but no earlier than the first day of the first calendar quarter of the substantial noncompliance.

D. *Renewal after termination.* The Business and the Service Representative may at any time enter into a new TRAC agreement.

V. EFFECTIVE DATE OF AGREEMENT

A. *General rule.* This TRAC agreement is effective on the first day of the first calendar quarter following the date the Service

Representative signs the TRAC agreement.

B. *Additional establishment.* This TRAC agreement is effective with respect to an additional establishment on the first day of the quarter in which notification of the additional establishment is made.

VI. MISCELLANEOUS

A. *Examinations and/or inspections of books and records.* For purposes of this TRAC agreement—

1. *Compliance review.* A compliance review is not an examination or an inspection of the taxpayer's books of account or records for purposes of section 7605(b) of the Code, and is not a prior audit for purposes of section 530 of the Revenue Act of 1978.

2. *Examination.* The inspection of books of account or records pursuant to a tip examination is not an inspection of books or records for purposes of section 7605(b) of the Code, and is not a prior audit for purposes of section 530 of the Revenue Act of 1978.

B. *Employment tax classification.* Nothing in this TRAC agreement is intended to address the classification, for employment tax purposes, of any person who performs services at or for an Establishment.

C. *Notices.* The parties will send all correspondence pertaining to this TRAC agreement, including a notice of termination, to the addresses stated below, unless notified in writing of a change of address. In the event of a change of address, the parties must send all correspondence to the new address. All notices are deemed to be sent or submitted on the date of the postmark stamped on the envelope or, in the case of a notice sent by certified mail, the sender's receipt.

D. *Authority.* The Employer represents that it has the authority to enter into this TRAC agreement on behalf of itself and the Establishment(s) listed in Attachment A.

E. *General termination and sunset provision.* The Commissioner of Internal Revenue may terminate all TRAC agreements at any time following a significant statutory change in the FICA taxation of tips. After May 31, 2005, the Commissioner may terminate prospectively the Tip Rate Determination/Education Program and all TRAC agreements.

VII. PAPERWORK REDUCTION ACT

The collections of information contained in this document have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1529.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collections of information in this document are in sections I.C, II.A, II.B, II.C.1 and 2, and IV.A. This information is required to comply with sections 6053(a) and 6001 of the Internal Revenue Code and to assist the Internal Revenue Service in its compliance efforts. This information will be used to monitor the Employees performance under the TRAC agreement. The collections of information are required to obtain the benefits available under the TRAC agreement. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 58,267 hours.

The estimated annual burden per respondent/recordkeeper varies from 9 hours to 30 hours, depending on individual circumstances, with an estimated average of 14 hours. The estimated number of respondents and/or recordkeepers is 6,400.

The estimated annual frequency of responses (used for reporting requirements only) is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by section 6103 of the Code.

VIII. SIGNATURES

By signing this TRAC agreement, the parties certify that they have read and agreed to the terms of this document, including Attachment A, Names, Addresses, and Employer Identification Numbers by Employer of Establishments Covered Under TRAC Agreements.

Business:

INTERNAL REVENUE SERVICE:

(Name of Business)

(Signature)

(Signature)

BY: _____

BY: _____

(Service Representative's Name)

TITLE: _____

TITLE: _____

ADDRESS:

(Headquarters street address)

(City, state, ZIP code)

DATE: _____

ADDRESS:

(Street address)

(City, state, ZIP code)

DATE: _____

**ATTACHMENT A
ESTABLISHMENTS
[format for individual establishments]**

Business

A & B Hairstylists

xx-xxxxxxx

Street address

City, state, zip code

[format for chains]

Business (parent, if applicable)

XYZ Corp.

yy-yyyyyyy

Street address

City, state, zip code

Establishments (if applicable)

AB Restaurant

Street address

City, state, zip code

CD Restaurant

Street address

City, state, zip code

Related entity (if applicable)

UVW Corp.

zz-zzzzzzz

Street address

City, state, zip code

Establishments (if applicable)

EF Restaurant

Street address

City, state, zip code