

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

Announcement 2000-22

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 food and beverage 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 to-

gether 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 sim-

ilar 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 1995, the Service developed the TRAC agreement for use in the food and beverage industry. The agreement has been both popular and effective. The industry has expressed interest in making the educational program and tip reporting procedures more flexible.

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 is more flexible.

The Service also announces that it will treat an electronic system (including point-of-sale systems) that prompts an employee to report tips after each sale as meeting the TRAC requirement that an employer educate its employee at least quarterly. The

Service requests comments on other electronic tip reporting system.

COMMENTS

Written comments must be received by July 7, 2000. Send submissions to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 2000-22), 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. 2000-22), 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/reglist.html.

OTHER TRDA AND TRAC AGREEMENTS

The Service is simultaneously proposing by announcement in this Internal Rev-

enue Bulletin four other agreements: (1) a revised TRDA for use in the food and beverage industry (Announcement 2000-23), (2) a revised TRAC agreement for use in the cosmetology and barber industry (Announcement 2000-21), (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 Ida Volz of the Office of Specialty Taxes on (202) 622-4177 (not a toll-free call).

Release date: April 24, 2000

TIP REPORTING ALTERNATIVE COMMITMENT

(For use only in the food and beverage industry)

between

Department of the Treasury—Internal Revenue Service

and

_____ [Name of Employer]

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.

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. *Employer* 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 Employer has one place of business, that place of business is an Establishment, and no attachment is necessary.

2. *Additional establishment*. If the Employer subsequently wishes to include an additional establishment in this TRAC agreement, the Employer 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.

II. COMMITMENT OF EMPLOYER

A. Education.

1. *New Employees.* The Employer will establish an educational program that trains newly hired Employees that the law requires them to report all their cash and charged tips to their employer. At a minimum, the program will give each Employee—

a. 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;

b. 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 1872, *Tips on Tips* for employees in the food and beverage industry; and

c. An explanation of the Employer's tip reporting procedures.

2. *Existing Employees.* The Employer will establish a quarterly education program for existing Employees.

B. *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. An Employer may provide different procedures for cash and charged tips, as well as for directly tipped and indirectly tipped Employees. IRS Publication 1875, *Tips on Tips* for employers in the food and beverage industry, includes an example of an acceptable TRAC statement that an employer can use for both directly and indirectly tipped Employees.

C. Returns, taxes, and records.

1. *Filing returns and paying and depositing taxes.*

a. *In general.* The Employer (or employing Establishment) will comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes.

b. *Form 8027.* For each Establishment that is a "large food or beverage establishment," the Employer will comply with the requirements for filing Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*, and send an additional copy of each Form 8027 to the IRS.

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 Employer 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 Employer will make the following quarterly totals available, by Establishment, for statistical samplings of its Establishments:

a. Gross receipts subject to tipping,

b. Charge receipts showing charged tips,

c. Total charged tips, and

d. Total tips reported.

III. COMMITMENT OF INTERNAL REVENUE SERVICE

A. *Tip examinations.* The IRS will not initiate any tip examinations of the Employer (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 Employer (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 Employer for compliance with the provisions of this TRAC agreement.

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

IV. TERMINATION OF AGREEMENT

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

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

1. The Service Representative determines that the Employer (or any Establishment) has failed to substantially comply with section II.A (pertaining to Education for Employees) or II.B (pertaining to Employee tip reporting procedures);

2. The Employer (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

3. The IRS pursues an administrative or judicial action relating to the Employer, 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 Employer 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. *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.

C. *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.

D. *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 1545-1549.

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.2 and 3, 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 Employer's 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 42,296 hours.

The estimated annual burden per respondent/recordkeeper varies from 7 hours to 30 hours, depending on individual circumstances, with an estimated average of 14 hours. The estimated number of respondents and/or recordkeepers is 6,600.

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, Establishments.

EMPLOYER:

INTERNAL REVENUE SERVICE:

(Name of Employer)

(Signature)

(Signature)

BY: _____

BY: _____

(Service Representative's Name)

TITLE: _____

TITLE: _____

ADDRESS:

ADDRESS:

(Headquarters street address)

(Street address)

(City, state, ZIP code)

(City, state, ZIP code)

DATE: _____

DATE: _____

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

Employer

A & B Company

xx-xxxxxxx

Street address

City, state, zip code

[format for chains]

Employer (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

GH Restaurant

Street address

City, state, zip code