

TIP RATE DETERMINATION AGREEMENT

(For use by employers in the food and beverage industry)

between

Department of the Treasury–Internal Revenue Service

and

_____ [Name of Employer]

This Tip Rate Determination Agreement (TRDA) is part of the Tip Rate Determination/Education Program implemented by the Internal Revenue Service 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 AND ATTACHMENTS

A. Definitions.

1. Service Representative means the Internal Revenue Service employee or delegate authorized to execute or terminate this TRDA on behalf of the Internal Revenue Service.

2. Employer means
[insert name, address, and EIN].

3. Establishment means each of the establishments or divisions listed by name, address, and EIN in Attachment A [sample attached].

a. One place of business. If the Employer has one place of business, that place of business is an Establishment, and no attachment is necessary.

b. Additional establishment. If the Employer subsequently wishes to include an additional establishment in this TRDA, the Employer must notify the Service Representative in writing. The notification must include the name, address, and identifying number of the additional establishment.

4. Employee means a person whose Occupational Category is listed in Attachment B [sample attached], and who is employed by an Establishment, and who
Restaurant TRDA revised 9/16/2004

directly or indirectly receives tips of at least \$20.00 per month during the course of the employee's employment.

5. Occupational Category describes a group of employees performing a particular type of service to which a stated tip rate is assigned. Employees performing the same service at different locations or during different shifts may be assigned different Occupational Categories.

6. Participating Employee means an Employee who gives to the Employer a signed Tipped Employee Participation Agreement (TEPA), which includes the language set forth in Attachment C, indicating participation in the tip reporting program.

7. Tip Rate means the applicable rate described in Section III.

B. Attachments

1. Attachment A, Establishments, lists the Employer's establishments participating in this TRDA.

2. Attachment B, Occupational Categories and Initial Tip Rates, lists the Employee occupational categories and tip rates subject to this TRDA.

3. Attachment C, Tipped Employee Participation Agreement, is the document signed by an Employee agreeing to report tips at or above the rate established for the Employee's Occupational Category.

4. Attachment D, Formula for Tip Rate Calculation, is the calculation described in section III.A.1 for determining tip rates.

II. COMMITMENT OF EMPLOYER

A. Maintaining records. While this TRDA is in effect, and in addition to records otherwise required to be maintained, the Employer will maintain the following records:

1. Employee records. For each Employee, the Employee's name, address, social security number, sales, reported tips, charged tips paid out, shift(s) and hours, wages, and Occupational Category(ies).

2. Tip rates records. All records of data used to determine the tip rates.

The Employer will retain the records listed in this section II.A. for at least 4 years after the April 15 following the calendar year to which the records relate.

B. Furnishing information. The Employer will furnish to the Service Representative the following documents:

1. Quarterly report of employees. A quarterly report showing, as of the last day of each quarter, (1) the total number of Employees, and (2) the total number of Participating Employees. The report is due on the last day of the month following each calendar quarter.

2. Annual report of nonparticipating Employees.

a. General rule. For each Employee who is a nonparticipating Employee on the last day of the calendar year, an annual report showing the Employee's name, address, social security number, sales, reported tips, charged tips paid out, shift(s) and hours, wages, and Occupational Category(ies). The report may list all Employees, indicating those Employees who are nonparticipating Employees, as long as the required information is included for all nonparticipating Employees. The report is due on March 31 following each calendar year.

b. Exception. No report is required for an Occupational Category for any calendar year for which all the Employees in the Occupational Category reported tips at a rate equal to or greater than the rates established under section III of this TRDA.

C. Making records available. At the request of the Service Representative, the Employer will furnish any of the records identified in section II.A.

D. Filing returns and paying and depositing taxes.

1. 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.

2. 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.

III. TIP RATES

A. Tip rates.

1. Determining initial tip rates. The Employer will determine tip rates based on information available to the Employer, historical information provided by the Service Representative, and generally accepted accounting principles. The Employer may use a 28-day sample to determine tip rates. If Employees in an Occupational Category receive both charge and cash tips, the Employer may determine tip rates based on the formula set forth in Attachment D, Formula for Tip Rate Calculation. The rates will generally be based on a percentage of sales or a dollar amount per hour, but a different measure may be used.

2. Initial tip rates. The initial tip rates are identified in Attachment B, Occupational Categories and Initial Tip Rates. They will remain in effect through December 31 of the calendar year following the year in which this TRDA takes effect.

B. Determining subsequent tip rates and Occupational Categories.

1. Annual review of tip rates. The Internal Revenue Service will review the Employer's Occupational Categories and tip rates no more frequently than annually. An annual review can be initiated by either party by so informing the other party no later than June 1 of the year. The initiating party will submit proposed revisions to the other party by August 1 of the year. Both parties will work to achieve agreement. By November 30, the Service Representative will notify the Employer in writing of the new rates. If the Employer does not agree with any of the rates, the existing rates will be continued until no later than the last day of the following March. If the Employer and the Service Representative are unable to agree upon a rate or rates by the last day of the following March, this TRDA will terminate pursuant to section V.C.

2. Effective date of revised tip rates and Occupational Categories. The revised rates will become effective on the later of (1) January 1 of the following calendar year, or (2) the first day of the month following the date the Employer and the Service Representative agree upon a revised rate.

IV. COMMITMENT OF INTERNAL REVENUE SERVICE

A. Participating Employee. The IRS will not examine a Participating Employee's tip income for any period for which a TEPA is in effect, if the Employee reports tips to the Employer at or above the tip rate established for the Employee.

B. Employer.

1. Tip examinations. The IRS will not initiate any tip examinations of the Employer (or Establishment) for any period for which this TRDA is in effect, except in relation to a tip examination of one or more Employees or former Employees of the Employer (or Establishment)..

2. 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 TRDA is in effect will be based solely on amounts reflected on—

- a. Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, filed by an Employee with his or her Form 1040, or
- b. 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 and its Participating Employees for compliance with the provisions of this TRDA.

V. TERMINATION OF AGREEMENT

A. Termination by Employer. If the Employer no longer wishes this TRDA to apply to one or more Establishments, the Employer may terminate this TRDA 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 TRDA will be terminated.

B. Termination by Internal Revenue Service. The IRS may terminate this TRDA, with respect to the Employer or an Establishment, only if–

1. As of any December 31, less than 75 percent of the Employees are Participating Employees,

2. The Employer fails to meet any of the requirements of section II, Commitment of Employer, or

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

C. Termination upon failure of parties to agree to revision of tip rates. This TRDA will terminate if the Employer and the Service Representative fail to agree to a revision of the tip rates under section III.B.

D. Notice of termination and effective date. Any termination will be effective the first day of the first calendar quarter after the terminating party notifies the other party in writing. The terminated agreement will continue to apply to periods during which the agreement was effective.

E. Renewal after termination. The Employer and the Service Representative may at any time enter into a new TRDA.

VI. EFFECTIVE DATE OF AGREEMENT

A. General rule. This TRDA is effective on the first day of the first calendar quarter following the date the Service Representative signs the TRDA.

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

VII. MISCELLANEOUS

A. Examinations and/or inspections of books and records. For purposes of this TRDA–

1. Compliance review. A compliance review is not treated as an examination or an inspection of the taxpayer's books of account or records.

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 TRDA 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 TRDA.

D. Termination of prior agreement. Any prior TRDA relating to an Establishment covered by this Agreement shall terminate on the day preceding the effective date of this Agreement with respect to the Establishment. The terminated agreement will continue to apply to periods during which the agreement was effective.

E. General termination and sunset provision. The Commissioner of Internal Revenue may terminate all TRDAs at any time following a significant statutory change in the FICA taxation of tips.

VIII. 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 1545-1715.

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.A.3, 4, and 5, II.A, II.B, II.C., III, and V.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 TRDA. The collections of information are required to obtain the benefits available under the TRDA. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 1,737 hours.

The estimated annual burden per respondent/recordkeeper varies from 6 hours to 20 hours, depending on individual circumstances, with an estimated average of 11 hours. The estimated number of respondents and/or recordkeepers is 200.

The estimated annual frequency of responses 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.

IX. SIGNATURES

By signing this TRDA, the parties certify that they have read and agreed to the terms of this document, including Attachments A, B, and C.

EMPLOYER:

INTERNAL REVENUE SERVICE

(Name of Employer)

(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

ATTACHMENT B

OCCUPATIONAL CATEGORIES AND INITIAL TIP RATES

[sample format]

| <u>Occupational Categories</u> | <u>Initial Tip Rates</u> |
|--------------------------------|--------------------------|
| Category A | actual tips |
| Category B -- 1st shift | ___% of sales |
| Category B -- 2nd shift | ___% of sales |
| Category B -- 3rd shift | ___% of sales |
| Category C -- location 1 | \$ / |
| Category C -- location 2 | \$ / |

ATTACHMENT C

TIPPED EMPLOYEE PARTICIPATION AGREEMENT

I am an employee of
and wish to participate in my employer's tip reporting program.

In accordance with a Tip Rate Determination Agreement between my employer and the Internal Revenue Service, I agree to report my tips to my employer, as required by law, at or above the tip rate established by my employer and approved by the IRS for my Occupational Category.

I also acknowledge that, to continue participation in my employer's tip reporting program, I must file all federal tax returns required by law and pay all federal taxes for which I am liable.

EMPLOYEE

Name (printed):

Signature:

Home address:

Social Security Number:

DATE:

Attachments:

Copy of TRDA and Attachment B (Occupational Categories and Tip Rates)
Copy of TRDA Information for Employees

ATTACHMENT D

FORMULA FOR TIP RATE CALCULATION

Directly tipped employees

Step 1: Determine charged and cash tip rates.

$$\text{Charged tip rate} = \frac{\text{Total charged tips}}{\text{Total charged sales with charged tips}^*}$$

$$\text{Cash tip rate} = \text{Charged tip rate} \\ \text{less: difference between charged and cash tips}$$

Step 2: Calculate tip rate per hour (or per sales)

1. Gross sales subject to tipping
2. minus: stiff factor
charged sales with charged tips
other factors
3. equals: sales subject to cash tipping
4. times cash tip rate
5. equals: cash tips received
6. plus: charged tips
tips received from other employees
7. equals: total tips received
8. minus: tip outs
9. equals: adjusted tips
10. divided by: total hours worked (or total sales)
11. equals: tip rate per hour (or per sales)

Indirectly tipped employees

Calculate tip rate per hour:

$$\text{Tip rate per hour} = \frac{\text{Tips received from other workers}}{\text{Total hours worked}}$$

* If this figure is unavailable, use "total charged sales" for the denominator to figure the charged tip rate.