

Employer-designed Tip Reporting Program for the Food and Beverage Industry

Notice 2000-21

I. BACKGROUND

In 1993, the Internal Revenue Service introduced 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. The TRD/EP was developed as a means of enhancing tax compliance while reducing taxpayer burden. In essence, the TRD/EP envisions that the Service and taxpayers in industries in which tipping is common will 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 both the employer and employees who comply with the terms of the agreement 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.

TRDAs are currently in use in the food and beverage industry and the gaming industry. TRAC agreements are currently in use in the food and beverage industry and the hairstyling industry. The Service expects to begin making these agreements available to other industries during 2000.

Taxpayers in the food and beverage industry have expressed interest in designing their own TRAC programs. This notice sets forth the requirements employers must meet and the procedures for obtaining approval of their individual programs. Because the basic premise of the employer-designed program is similar to the TRAC program, the employer-designed program is designated the EmTRAC program. The Service believes that employers that have already developed their own

educational programs and tip reporting procedures will find that the EmTRAC program meets their needs.

II. EmTRAC PROGRAM

The EmTRAC program is available only to employers in the food and beverage industry that have employees who receive both cash and charged tips. The employer may have one place of business or many places of business. For purposes of the program, each place of business is called an establishment. If an employer has more than one establishment, it can choose which establishments to include in its EmTRAC program.

The EmTRAC program retains many of the provisions in the TRAC agreements. The employer must establish an educational program that trains employees that the law requires them to report all their cash and charged tips to their employer. Education must be furnished for newly hired employees and quarterly for existing employees.

The employer must establish tip reporting 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.

The employer has considerable latitude in designing its educational program and tip reporting procedures and may combine them. For example, a point-of-sale tip reporting system would meet both of these requirements, because the employee is prompted of the tip reporting requirement at the end of each sale and because the reporting occurs at the end of each sale.

The employer must agree—

1. to comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes;

2. to maintain the following records for at least 4 years after the April 15 following the calendar year to which the records relate:

- a. gross receipts subject to tipping, and

- b. charge receipts showing charged tips; and

3. upon the request of the Service, to make the following quarterly totals avail-

able, 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.

The Service agrees—

1. not to initiate any tip examinations of the employer or an establishment included in the EmTRAC for any period for which the EmTRAC program is in effect;

2. to base any section 3121(q) notice and demand issued to the employer or an establishment included in the EmTRAC and relating to any period during which the EmTRAC program is in effect 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; and

3. not to evaluate the employer for compliance with the provisions of its EmTRAC program for the first two calendar quarters for which the EmTRAC program is effective.

Both parties agree that, for purposes of the EmTRAC program, a compliance review is not treated as an examination or an inspection of books of account or records, and an 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.

The effective date of an EmTRAC program is the first day of the quarter beginning on or after the date the Service signs an approval letter.

An employer may at any time terminate its EmTRAC program either completely or with respect to one or more establishments. The Service may terminate its approval only if—

1. the Service determines that the employer has failed to comply with the required provisions; or

2. the Service pursues an administrative or judicial action relating to the employer, an establishment included in the EmTRAC, or any other related party to the employer's EmTRAC program. Any termination is effective the first day of the first calendar quarter after the terminating party notifies the other party in writing.

III. PROCEDURES FOR REQUESTING APPROVAL

The employer must request approval of its EmTRAC program. For this purpose, the Service has developed a pro forma letter that employers must use to request approval of their EmTRAC program. The letter requests approval of the employer's EmTRAC program and states that the employer will comply with the provisions set forth in the letter (and also set forth in section II above).

A copy of the approval request letter is attached to this notice. It can be obtained by mail by contacting the tips coordinator in any local IRS office or by calling (202 622-4177 (not a toll-free call).

The completed approval request letter and a copy of the employer's EmTRAC program should be sent to:

Internal Revenue Service
OP:EX:ST:ET Room 2404
Attn: EmTRAC Coordinator
1111 Constitution Avenue, NW
Washington, DC 20224

IV. PROCEDURES FOR APPROVING REQUESTS

After it receives the approval request letter, the Service will review the employer's program. If the program meets the necessary requirements, the Service will send the employer an approval letter, a copy of which is attached to this notice. The approval letter will specify the effective date of the employer's EmTRAC program.

If the IRS determines that the employer's EmTRAC program fails to meet all the requirements, the IRS will contact the employer and offer assistance in

working out a program that will meet both the employer's needs and the IRS's requirements.

V. MISCELLANEOUS

Upon request to the local tips coordinator or the EmTRAC Coordinator, the Service will assist any employer in establishing, maintaining, or improving its educational program or tip reporting procedures.

The Commissioner of Internal Revenue may terminate all EmTRAC programs 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 EmTRAC programs.

VI. PAPERWORK REDUCTION ACT

The collections of information contained in this notice will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507).

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 II and III. 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 its EmTRAC program. The collections of information are required to obtain the benefits available under the EmTRAC program. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 870 hours.

The estimated annual burden per respondent/recordkeeper varies from 8 hours to 44 hours, depending on individual circumstances, with an estimated average of 13

hours. The estimated number of respondents and/or recordkeepers is 20.

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.

VII. COMMENTS

The IRS invites interested persons to comment on the EmTRAC program. In particular, the Service requests comments from the industry regarding whether electronic tip reporting systems, other than the point-of-sale system, would also meet the educational requirement.

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

DRAFTING INFORMATION

The principal author of this notice 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).

Letter — Request for EmTRAC approval

Tip Coordinator
Internal Revenue Service

Re: Request for EmTRAC Approval

Dear Internal Revenue Service:

Pursuant to the Employer Tip Reporting Alternative Commitment Program (EmTRAC), I request your approval of the enclosed program for _____ (name of business).

In accordance with Notice 2000-21, 2000-19 I.R.B. , if you approve this program, _____ (name of business) agrees to:

- (1) comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes;
- (2) maintain the following records for at least 4 years after the April 15 following the calendar year to which the records relate:
 - a. gross receipts subject to tipping, and
 - b. charge receipts showing charged tips;
- (3) upon your request, make the following quarterly totals available, by establishment, for statistical samplings:
 - a. gross receipts subject to tipping,
 - b. charge receipts showing charged tips,
 - c. total charged tips, and
 - d. total tips reported;
- (4) operate its EmTRAC program as indicated in the program documents attached to this letter; and
- (5) comply with the terms of your approval described in Notice 2000-21.

Also in accordance with Notice 2000-21, _____ (name of business) agrees that a compliance review will not be treated as an examination or an inspection of its books of account or records and that your 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 Internal Revenue Code, and will not be treated as a prior audit for purposes of section 530 of the Revenue Act of 1978.

All correspondence pertaining to this EmTRAC program (including a notice of termination) should be sent to the address indicated below, unless we notify you in writing of a change of address. _____ (name of business) will send correspondence to you in the manner indicated in your approval letter. All correspondence is effective on the date of the postmark stamped on the envelope or, in the case of a notice sent by certified mail, on the sender's receipt.

I represent that I have the authority to agree to these terms on behalf of _____ (name of business).

If you have any questions, please contact _____ at _____ (telephone number) or _____ (e-mail address).

Name of Business

\s\ _____

By: _____

Title: _____

Date: _____

Enclosure: EmTRAC program documents

Letter – EmTRAC approval

Internal Revenue Service
Service Representative

Department of the Treasury

Person to Contact:
Identification Number:
Contact Telephone Number:

Re: EmTRAC Approval

Dear _____ (Taxpayer):

Thank you for your letter of _____ requesting our approval of your EmTRAC program and containing your agreements with respect to that program. We are pleased to inform you that your EmTRAC Program meets the requirements of Notice 2000-21.

Accordingly, we agree as follows:

Your EmTRAC program will be effective on _____ [insert the first day of the quarter beginning on or after the date the Service signs the letter]. The Service agrees not to initiate any new tip examinations of you or any of the establishments included in your letter for any period during which your EmTRAC program is in effect.

Any section 3121(q) notice and demand that we issue to you (or an establishment) relating to any period during which your EmTRAC program is in effect will be based solely on amounts reflected on Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, filed by an employee with his or her Form 1040, or Form 885-T, *Adjustment of Social Security Tax on Tip Income Not Reported to Employer*, prepared at the conclusion of an employee tip examination.

The Service will not evaluate your EmTRAC program for compliance until _____ [insert the first day of the second calendar quarter following the date on which the EmTRAC program becomes effective]. The Service may, however, review your progress in implementing your EmTRAC program before then.

Your EmTRAC program will remain in effect until you terminate it or the Service terminates it approval. If you no longer wish your EmTRAC program to apply to one or more of your establishments, you may terminate the program with respect to any establishment(s) by identifying the establishment(s) in writing to the Service Representative described below. If you want to completely terminate your EmTRAC program, please say that in your letter to the Service Representative.

The Service may terminate its approval only (1) if you fail to comply with your agreements described in your letter, (2) if the Service pursues an administrative or judicial action relating to you, an establishment, or any other related party to your EmTRAC program, (3) following a significant statutory change in the FICA taxation of tips, or (4) after May 31, 2005.

Any termination will be effective the first day of the first calendar quarter after the terminating party notifies the other party in writing, unless you (or an establishment) fail to comply with your agreements. In that case, the Service may terminate your EmTRAC program effective as of the first day of the quarter in which you ceased to comply.

Please send all correspondence relating to your EmTRAC program to _____ (name and address), unless we notify you in writing otherwise.

If you have any questions regarding this agreement, please contact _____ (ID _____) at _____ (telephone number) or _____ (e-mail address).

Thank you for your participation in the program.

INTERNAL REVENUE SERVICE

By: _____

ID: _____

Date: _____