



Notice 2001-1

*Notice 2001-1; 2001-1 C.B. 261; 2000 IRB LEXIS 377; 2001-2 I.R.B. 261*

January 8, 2001

[\*1]

**SUBJECT MATTER:** Employer-Designed Tip Reporting Program for the Food and Beverage Industry**TEXT:**

## 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 [\*2] 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 cosmetology and barber 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. *Notice 2000-21, 2000-19 I.R.B. 967*, set forth proposed requirements and procedures for obtaining approval of an employer-designed EmTRAC program. *Notice 2000-21* also offered interested persons the opportunity to comment on the proposed program. The Service received no comments. Even so, several non-substantive clarifying changes have been made. They appear in this document.

## 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 [\*3] retains many of the provisions in the TRAC agreement. 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.

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The EmTRAC program provides an employer with considerable latitude in designing its educational program and tip reporting procedures, which the employer may combine. For example, a point-of-sale tip reporting system could 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 [\*4] to which the records relate:
  - 1.
  - 2.
  1. gross receipts subject to tipping, and
  - 3.
  - 4.
  1. charge receipts showing charged tips; and
3. upon the request of the Service, to make the following quarterly totals available, by establishment, for statistical samplings of its establishments:
  - 5.
  - 6.
  2. Gross receipts subject to tipping,
  - 7.
  - 8.
  2. Charge receipts showing charged tips,
  - 9.
  - 10.
  1. Total charged tips, and
  - 11.
  - 12.
  1. Total tips reported. The Service agrees-

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; except in relation to a tip examination of one or more employees or former employees of the employer or an establishment.
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-
  - 13.
  - 14.

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3. Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, filed by an Employee with his or her Form 1040, or
- 15.
- 16.
3. 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 [\*5] 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 with respect to the EmTRAC program or a specific establishment or establishments, only if-

1. the Service determines that the employer or establishment(s) 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 [\*6] related party to the employer's EmTRAC program. Generally, any termination is effective the first day of the first calendar quarter after the terminating party notifies the other party in writing.

If the employer has an existing TRAC agreement or TRDA covering one or more establishments included in the employer's EmTRAC program, the existing TRAC agreement or TRDA will terminate with respect to that establishment or those establishments upon the approval of the employer's EmTRAC program.

### 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 an employer must use to request approval of its 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 tip coordinator in any local IRS office or by calling (202) 622-5532 (not a toll-free call).

The completed approval request letter and a copy of the employer's EmTRAC program should [\*7] be sent to:  
Internal Revenue Service  
S:C:CP:ET Room 2404  
Attn: EmTRAC Coordinator 1111 Constitution Avenue, N.W.  
Washington, DC 20224

### IV. PROCEDURES FOR APPROVING REQUESTS

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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 tip 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 December 31, 2005, the Commissioner may terminate prospectively the Tip Rate Determination/Education [\*8] Program and all EmTRAC programs.

#### VI. PAPERWORK REDUCTION ACT

The collections of information contained in this notice 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 1545-1716.

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 [\*9] of 13 hours. The estimated number of respondents and/or recordkeepers is 20.

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*.

#### VII. AFFECT ON OTHER DOCUMENTS

*Notice 2000-21* is superseded.

#### DRAFTING INFORMATION

The principal author of this notice is Karin Loverud of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, contact Ida Volz of the Office of Compliance Policy at (202) 622-5532 (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), EIN

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In accordance with *Notice 2001-1, 2001-21.R.B. 261*, if you approve this program (name of business) agrees to:

- (1) comply [\*10] 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:
  - 17.
  - 18.
  4. gross receipts subject to tipping, and
  - 19.
  - 20.
  4. charge receipts showing charged tips;
- (3) upon your request, make the following quarterly totals available, by establishment, for statistical samplings:
  - 21.
  - 22.
  5. gross receipts subject to tipping,
  - 23.
  - 24.
  5. charge receipts showing charged tips,
  - 25.
  - 26.
  2. total charged tips, and
  - 27.
  - 28.
  2. 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 2001-1*.

Also in accordance with *Notice 2001-1*, (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 will not be treated as 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 [\*11] 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

\\

By:

Title:

Date:

Enclosures:

EmTRAC program documents

List of establishments (name, address, and EIN) participating in the program

**Letter-EmTRAC approval**

Internal Revenue Service Department of the Treasury

Service Representative

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 2001-1*.

Accordingly, [\*12] 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, except in relation to a tip examination of one or more employees or former employees of you or an establishment.

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 [\*13] [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 its 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.

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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 December 31, 2005. If one or more establishments fail to comply with any of your agreements, the Service may choose to terminate its approval with respect to [\*14] that establishment(s).

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:

Send To: BRINSON, MARTHA  
IRS - HEADQUARTERS OPERATIONS  
1111 CONSTITUTION AVE NW RM 2116IR  
WASHINGTON, DC 20224-0002