

Gaming Industry Tip Compliance Agreement Program

Rev. Proc. 2003-35

SECTION 1. PURPOSE

The Gaming Industry Tip Compliance Agreement Program is designed to promote compliance by the gaming industry employers and employees with the provisions of the Internal Revenue Code relating to tip income and to reduce disputes under section 3121(q).

SECTION 2. OVERVIEW

Under the Gaming Industry Tipping Agreement Program, a gaming industry employer and the Internal Revenue Service may work together to reach a Gaming Industry Tip Compliance Agreement that objectively establishes minimum tip rates for tipped employees in specified occupational categories, prescribes a threshold level of participation by the employer's employees, and reduces compliance burdens for the employer and enforcement burdens for the Service.

SECTION 3. EMPLOYER PARTICIPATION

.01 All employers operating a gaming establishment may participate in the Gaming Industry Tip Compliance Agreement Program. Either the Service or an employer may suggest the employer's potential participation in the program.

.02 The Service's decision to refuse participation by any employer in this program is not subject to review and will not deprive the employer of any rights under Internal Revenue Service procedures.

SECTION 4. GAMING INDUSTRY TIP COMPLIANCE AGREEMENTS

.01 To participate in this program, an employer must execute a Gaming Industry Tip Compliance Agreement. The Gaming Industry Tip Compliance Agreement shall conform with all requirements of this revenue procedure and will use the form appended to this revenue procedure as Exhibit 1.

.02 An executed Gaming Industry Tip Compliance Agreement shall supersede all existing tip compliance agreements between an employer and the Service. An employer under any gaming industry tip compliance agreement, including a Tip Rate Determination Agreement, may request to change to a Gaming Industry Tip Compliance Agreement.

.03 In general, Gaming Industry Tip Compliance Agreements shall be for a term of three years. For new properties and for properties that do not have a prior agreement with the Service, however, the initial term of the Agreement may be for a shorter period.

.04 All Gaming Industry Tip Compliance Agreements may be renewed for additional terms of up to three years, in accordance with Section IX. of the form Gaming Industry Tip Compliance Agreement. Beginning not later than six months prior to the termination date of a Gaming Industry Tip Compliance Agreement, the Service and the employer shall commence discussions as to any appropriate revisions to the agreement, including any appropriate revisions to the tip rates described in Section VIII. of the form Gaming Industry Tip Compliance Agreement. In the event that the Service and the employer have not reached final agreement on the terms and conditions of a renewal agreement, the parties may, by mutual agreement, extend the existing agreement for an appropriate time to finalize and execute a renewal agreement.

.05 Decisions regarding renewal of a Gaming Industry Tip Compliance Agreement are not subject to review.

SECTION 5. DEEMED COMPLIANCE WITH SECTION 6053.

An employer who complies with the reporting requirements of Section V. of its Gaming Industry Tip Compliance Agreement, and participating employees of the employer who report in accordance with the agreement, will be deemed to be in compliance with the reporting requirements of section 6053 of the Internal Revenue Code for the taxable periods during which the agreement remains in effect.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective May 1, 2003.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has 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 1545-1530. 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 OMB control number.

The collection of information in this revenue procedure is in the section titled GAMING INDUSTRY TIP COMPLIANCE AGREEMENTS. This information is required to evaluate the suitability of the Gaming Industry Tip Compliance Agreement Program for the particular taxpayer and to assess the validity of the proposed tip rates. The collection of information is required to obtain the benefits described in this revenue procedure. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting burden is 6100 hours.

The estimated annual burden per respondent is an average of 10 hours, depending on individual circumstances. The estimated number of respondents is 610.

The estimated frequency of responses is 1 time per year per respondent.

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 26 U.S.C. § 6103.

SECTION 8. CONTACT INFORMATION

A taxpayer that wants to participate in the Gaming Industry Tip Compliance Agreement Program, or that has questions about the program, may contact Thomas Burger at (202) 622-3704 (not a toll-free number) or by email at thomas.r.burger@irs.gov or Jason Spitzer at (202) 622-7940 (not a toll-free number) or by email at jason.a.spitzer@irs.counsel.treas.gov.

Exhibit 1

Gaming Industry Tip Compliance Agreement

I. PARTIES

The parties to this Agreement are _____ (hereinafter "Employer") and the Commissioner of the Internal Revenue Service (hereinafter "Service"; collectively "the parties"). This Agreement will establish tip rates for all Participating Employees of the Employer. This Agreement is pursuant to Rev. Proc. 2003-35.

II. APPENDICES

The parties have agreed to:

- A. The Occupational Categories, available shifts, and tip rates for all participating employees of the Employer, set forth in Appendix A,
- B. A Narrative Summary of Tip Rate Calculation Methodology (specific to the Employer), set forth in Appendix B,
- C. The Model Gaming Employee Tip Reporting Agreement, set forth in Appendix C, and
- D. The Model Extension Agreement, set forth in Appendix D.

III. INTENDED BENEFICIARIES

The Participating Employees of the Employer are intended beneficiaries of this Agreement.

IV. EMPLOYEE PARTICIPATION

- A. For purposes of this Agreement, an "Eligible Employee" means an individual who:
 - (1) performs a job function in an Occupational Category described in Appendix A of this Agreement, and;
 - (2) regularly and routinely receives tips, directly or indirectly, of at least \$20 per month during the course of his or her employment.
- B. A "Participating Employee" is an Eligible Employee who:
 - (1) filed, if required to do so by law, federal income tax returns for the three taxable years that precede the Effective Date of this Agreement or, if he or she has not filed, files these returns prior to signing the Model Gaming Employee Tip Reporting Agreement provided in Appendix C of this Agreement;
 - (2) gives to the Employer a signed Model Gaming Employee Tip Reporting Agreement;
 - (3) reports and continues to report his or her tips to the Employer at or above the "tip rates" set forth in Section VIII. of this Agreement, except as provided by paragraph E of this section; and
 - (4) timely files federal income tax returns that report those tips.
- C. An Eligible Employee who has filed federal income tax returns for the three taxable years that precede the Effective Date of this Agreement but has not fully paid the tax liability reported on such returns, or has additional tax liability due to, for example, a completed examination of such returns or the filing of amended returns, may participate in this program. To participate, however, he or she must contact the local office of the Service within the later of 60 days of electing to become a Participating Employee under this Agreement or 60 days of commencing employment to resolve his or her tax liability.
- D. For purposes of this Agreement, a "Nonparticipating Employee" is any Eligible Employee who is not a Participating Employee.
- E. A Participating Employee may report tips on his or her federal tax return below the tip rates if the employee can substantiate, with adequate books and records, that he or she earned less tip income than would be reflected by applying the tip rates.

V. EMPLOYER PROGRAM

- A. The Employer agrees to encourage all of its Eligible Employees to become Participating Employees and to sign the Model Gaming Employee Tip Reporting Agreement, attached as Appendix C. The Employer will keep these agreements for at least the period of limitation on assessment of employment tax for the years in which this Agreement is in effect and the Employer will make the agreements available to the Service upon request.
- B. The Employer shall make tax withholding based upon tips reported, as required by law.
- C. The Employer shall include all reported tips in I.R.S. Forms W-2.
- D. The Employer acknowledges that the Service has authority, including the issuance and enforcement of summonses pursuant to sections 7602, 7604, and 7609 of the Code, to secure the information necessary to the Service to develop the tip rates of Nonparticipating Employees.

E. The Employer shall maintain the following records, to be made available to the Service upon request:

(1) Employee records. For each Eligible Employee, the Employer will maintain a record of the employee's name and social security number; the date on which the employee was hired by the Employer; the employee's Occupational Category or Categories, as set forth in Appendix A; the employee's reported tips; the employee's shift(s) and/or hours; and the employee's wages.

(2) Gaming establishment records. For each instance of toke and chip-cashing, where such information is in the possession or control of the Employer, the Employer will maintain a record of the dollar amount of tokens and chips presented to the Employer for cashing by the toke committee (or other representatives of eligible employees); a list of the tip splits furnished to the Employer by its Eligible Employees or the toke committee (or other representatives of eligible employees); and other separate records of the amounts presented to the Employer for cashing by toke committee. The Service acknowledges that the records of the toke committee reflecting the actual division of tips may not be in the Employer's possession or control.

(3) Food and beverage operations records. If the Occupational Categories set forth in Appendix A include food or beverage servers, the Employer will maintain gross receipts subject to food or beverage tipping, and aggregate receipts showing charged tips.

(4) Tip rates records. The Employer will maintain any other records relevant to determining tip rates, as may be required by other governmental agencies.

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

F. The Employer shall furnish to the Service the following documents:

(1) An annual report showing each Eligible Employee's name and social security number; the Employee's Occupational Category or Categories; the employee's shift(s) and hours; the employee's wages and reported tips; and whether the employee is a Participating Employee. The report is due on or before March 31 for the preceding calendar year or any portion thereof during which the Gaming Industry Tip Compliance Agreement was in effect.

(2) If the Occupational Categories listed in Appendix A include employees of large food and beverage establishments as defined in section 6053(c)(4) of the Code, the Employer shall provide annually to the Service the following information: (1) the gross receipts subject to food and beverage tipping; (2) the aggregate amount of charge receipts attributable to such gross receipts; (3) the aggregate amount of charged tips shown on such charge receipts; (4) the sum of (i) the aggregate amount of tips reported by Nonparticipating Employees to the Employer and (ii) the amount the Employer is required to report under section 6051 of the Code with respect to service charges of less than 10 percent; and (5) the amount allocated to each Nonparticipating Employee under section 6053(c)(3) of the Code. In addition, the Employer shall include on the Forms W-2 issued to Nonparticipating Employees tips allocated pursuant to section 6053 of the Code. No such tip allocation shall be required on Forms W-2 issued to Participating Employees. Accordingly, no preparation and filing of I.R.S. Forms 8027 by the Employer shall be required with respect to Participating Employees. The information is due on or before the Form 8027 filing date.

G. If the Employer complies with the terms of this Agreement with respect to its Participating Employees and provides the information described in paragraph F of this section to the Service with respect to its Nonparticipating Employees on I.R.S. Forms 8027 (or the equivalent information in an alternate form deemed acceptable by the Service) and I.R.S. Forms W-2, the Employer shall be deemed to satisfy the requirement that the Employer prepare and file I.R.S. Forms 8027 with respect to its Employees.

H. If the Employer fails to maintain or provide any material information in the manner described in paragraphs E and F of this section, following notice and demand to the Employer for such information the Service may employ any lawful means, including the issuance and enforcement of summonses pursuant to sections 7602, 7604, and 7609 of the Code, in order to secure that information.

I. In the event of a material breach by the Employer of its obligation to maintain or provide the information described in paragraphs E and F of this section that continues following notice and demand for such information by the Service, the restrictions in Section VII.A on methods of determination of additional liabilities under section 3121(q) of the Code shall be deemed to be waived by the Employer and shall be inapplicable for all taxable periods occurring after the date of such material breach, and the Service shall be permitted to determine employer liability by any lawful means.

VI. TIP EXAMINATIONS OF EMPLOYEES

A. Except as provided in paragraph B. of this section, the Service may not examine a Participating Employee's tip income for any taxable year that ends after the Effective Date of this Agreement to which this Agreement applies, provided that each of the following conditions is met:

(1) The employee is a Participating Employee for the entire taxable year (or such portion thereof during which he or she earns tip income). In the case of a new employee, he or she must become a Participating Employee within 60 days after commencement of employment with the Employer as an Eligible Employee.

(2) The Participating Employee reports the tips he or she earns during the taxable year to the Employer at or above the tip rates set forth in Section VIII. of this Agreement.

(3) The Participating Employee timely files a federal income tax return for the taxable year that reports earned tips and wages reported on IRS Form W-2.

B. If an employee becomes a Participating Employee more than 60 days after becoming employed as an Eligible Employee, the Service may examine the Participating Employee's tip income received before the employee becomes a Participating Employee, unless the employee was a participating employee of the Employer or another employer under a tip compliance agreement for any taxable year. Once the employee becomes a Participating Employee, the Service may not examine the employee's tip income received after the employee becomes a Participating Employee.

C. The Service may not examine tip income of a Participating Employee for any taxable year that ends on or before the Effective Date of this Agreement, provided that during that prior period he or she was:

(1) a participating employee of the Employer under a predecessor agreement between the Employer and the Service and satisfied the terms and conditions of that agreement in that prior taxable year;

(2) a participating employee of another employer who had a Gaming Industry Tip Compliance Agreement (or a predecessor agreement) with the Service and satisfied the terms and conditions of that agreement in that prior taxable year; or

(3) an employee of (i) an employer that did not have a Gaming Industry Tip Compliance Agreement (or predecessor agreement) with the Service or (ii) the Employer but held a position in which he or she was not an Eligible Employee, and he or she filed, if required to do so by law, federal income tax returns for the three taxable years that preceded the Effective Date of this Agreement year.

D. A Nonparticipating Employee is subject to the full range of compliance and enforcement procedures of the Service, at any time, including during the term of this Agreement. (The treatment of the Employer in the case of Nonparticipating Employees is set forth in Section VII.A.(2)).

E. At the Service's discretion, the Service may continue any ongoing examination of any employees of the Employer begun by the Service before the Effective Date of this Agreement.

VII. TIP EXAMINATIONS OF EMPLOYER

A. With respect to any taxable year during which this Agreement is in effect:

(1) the Service may not assert liability against the Employer pursuant to section 3121(q) of the Code with respect to the tip income of Participating Employees (except in the limited case provided in subparagraph (2)(ii) immediately below);

(2) the Service may assert liability against the Employer pursuant to section 3121(q) of the Code based on (i) tips received by a Nonparticipating Employee if the asserted liability is based upon the final results of an audit or agreement of the Nonparticipating Employee or (ii) the reporting of additional tip income by an employee.

B. At the Service's discretion, the Service may continue any ongoing examination of the Employer begun by the Service before the Effective Date of this Agreement.

VIII. TIP RATES

A. This Section sets forth the applicable tip rates under this Agreement. The parties established the applicable tip rates as follows:

(1) **Employees Who Pool Tips.** In satisfaction of their tip reporting obligations under section 6053(a) of the Code with respect to Employees who pool tips, these Employees or their employee group representatives (*e.g.*, the token committee) shall present to the Employer a listing of the actual share of pooled tips received by or given to each Employee. This listing must reconcile to the tips presented to the Employer's cage for cashing. The tip rate in the case of these Employees is the amount of tips so reported to the Employer with respect to each such Employee.

(2) **Other Tipped Employees — Specified Occupational Categories.** By agreement between the Employer and the Service, based on information available from the Employer, historical information available to the Service, and generally accepted accounting principles, tip rates have been established for the occupational categories or subcategories of Eligible Employees ("Occupational Category") and, where applicable, shifts listed on Appendix A. These rates specify tips received, by hour, by shift, by drink, by percentage of sales, or other mutually agreed and verifiable bases of measurement depending on the nature of the work performed.

B. (1) In general. The applicable Tip Rates and Occupational Categories established by this Agreement shall remain in effect for the term of this Agreement, unless otherwise modified pursuant to paragraphs B.(2) or (3) of this section.

(2) **Mutual agreement process.** The Service or the Employer may propose revisions to Tip Rates or Occupational Categories during the term of the Agreement. The non-proposing party will notify the proposing party in writing of approval or disapproval within 60 calendar days of receipt of the proposed revision. The non-proposing party will not unreasonably withhold approval. If accepted, the revisions will become effective upon the date agreed to by the parties.

(3) **Specific events.** Upon the occurrence of one of the following specific events—

(a) a significant change in the nature of the business (or segment thereof) in which the Participating Employee earns tips (*e.g.*, Employer converts upscale restaurant into coffee shop),

(b) a decrease of 20 percent or more in the Employer's gross monthly revenue as compared to the same month of the previous year, or

(c) a drop below 50 percent in the participation rate of any Occupational Category as of the participation measurement date,

the Employer may request that the Service agree to a modification in the relevant Tip Rate of an affected Participating Employee within an Occupational Category (*e.g.*, an outlet or shift) that is appropriate in amount and duration, which consent shall not be unreasonably withheld. The process established in this paragraph B.(3) for the revision of a Tip Rate upon the occurrence of specific events in no way limits the circumstances that may give rise to a request for revision of a Tip Rate under the mutual agreement process described in paragraph B.(2) of this section.

IX. TERM OF AGREEMENT

A. This Agreement shall commence on the Effective Date and shall terminate on _____. The “Effective Date” of this Agreement shall be _____.

B. The Service and the Employer agree that, beginning not later than six months prior to the termination date described in paragraph A., they shall commence discussions as to any appropriate revisions to this Agreement, including any appropriate revisions to the tip rates described in Section VIII. In the event that the Service and the Employer have not reached final agreement on the terms and conditions of a renewal Agreement to become effective beginning on _____, the parties may, by mutual agreement, extend this agreement for an appropriate time to finalize and execute a renewal Agreement.

C. Neither the Employer’s nor the Service’s decisions regarding renewal of agreements are subject to review.

X. TERMINATION OF AGREEMENT; SURVIVAL OF TERMS

A. If Employee participation is below 75 percent of the Eligible Employees, the Service and Employer shall meet to discuss the cause of the decline in the participation rate and appropriate measures to increase the participation rate. At the meetings, the Employer shall provide information with respect to the records necessary for assessing the tip rate and for assessing the procedures employed to encourage all of the Employer’s Eligible Employees to be Participating Employees.

(1) If the Employer undertakes good faith consultations with the Service to discuss these matters and the Employer is not in breach of its obligations under Section V.A., the Service may not terminate the Agreement.

(2) If the Employer fails to undertake good faith consultations with the Service to discuss these matters or the Employer is in breach of its obligations under Section V.A., the Service may terminate the Agreement.

B. The Service may terminate this Agreement if participation falls below 50 percent of the Eligible Employees. Termination shall be effective beginning with the first calendar quarter that commences after the 60-day period for notice to the Employer.

C. This Agreement may be terminated upon the joint agreement of the Employer and the Service, without the consent of any Participating Employee. The effective date of termination shall be as agreed to by the Employer and the Service.

D. If either party fails to comply with any material provision of this Agreement, the non-defaulting party, at its option, may terminate this Agreement by giving written notice of termination to the other party. Termination of the Agreement shall be effective upon receipt of the notice by the other party.

E. If this Agreement is terminated pursuant to the terms of this agreement, the mutual obligations of the parties shall remain in effect through the effective date of termination. The agreements set forth in Sections VI. and VII. shall survive termination with respect to taxable periods (or portion thereof) that occur prior to the effective date of termination.

XI. PRECEDENTIAL VALUE

The contents of this agreement may not be used or cited as precedent by any other Employer or other taxpayer and will not bind, or otherwise control, the parties for taxable years or issues not covered by this Agreement.

XII. FAILURE TO COMPLY

If the Employer fails or refuses to provide any of the information required by this Agreement, the Service may employ any lawful means, including the issuance and enforcement of summonses pursuant to sections 7602, 7604, and 7609 of the Code, in order to secure the information.

XIII. COMPLIANCE REVIEW

The Employer agrees that a compliance review or other inspection of books and records, as required for compliance with the terms of this Agreement, will not be considered an inspection of books and records for purposes of section 7605(b) of the Code, or an audit for purposes of section 530 of the Revenue Act of 1978.

XIV. EXCLUSION OF CERTAIN EMPLOYEES

This Agreement does not cover those employees of Employer working in housekeeping and such employees shall not be considered Eligible Employees for purposes of this Agreement.

XV. OTHER AGREEMENTS SUPERSEDED

This Agreement shall supersede all existing tip compliance agreements between the Employer and the Service.

XVI. ENTIRE AGREEMENT

This Agreement contains the final and entire agreement between the Employer and the Service.

By signing this *Gaming Industry Tip Compliance Agreement*, the parties certify that they have read and agreed to the terms of this document, including Appendices.

EMPLOYER:

INTERNAL REVENUE SERVICE:

By _____

By _____

TITLE _____

TITLE Territory Manager
[operating division]
Territory XX

Address

Address

Date: _____

Date: _____

APPENDIX A

Occupational Categories, Outlets, Shifts, and Tip Rates

Occupational Category	Outlet	Shift	Tip Rate
Food Server			
Cocktail Server			
Bartender			
Room Service Food Server			
Bell Person			
Valet			
Barback			
Bingo			
Cage			
Captain			
Change person			
Doorman			
Keno Writers/Runners			
Race & Sportsbook writers/runners			
Maitre D'			
Parking (Valet)			
Bus Person			
Slot Floorperson			
Other			
Other			
Other			

APPENDIX B

Narrative Summary of Tip Rate Calculation Methodology

APPENDIX C

Model Gaming Employee Tip Reporting Agreement

I am an employee of _____, and by signing this agreement I am choosing to participate in the tip reporting program administered by my employer under the Gaming Industry Tip Compliance Agreement between my employer and the Internal Revenue Service (IRS).

I understand that I have responsibilities under this tip reporting program:

- In general, I agree to report to my employer tips at or above the tip rate that has been established for my job. However, I understand that I may report tips below the tip rate if I can substantiate, to the satisfaction of the IRS and subject to a possible review by the IRS, that I earned less tip income than would be reflected by applying the tip rate.
- I agree to file my Federal tax return on a timely basis and report those tips and the rest of my earnings from my job as shown on the IRS Form W-2 that my employer gives me and my other income.
- For each of the three years prior to the date of this agreement, if required to do so I have filed a Federal tax return on a timely basis. If I have filed all of these tax returns but have not fully paid the tax I owe, I must contact the local office of the IRS within 60 days from now to resolve my account.

If I fulfill my responsibilities and continue to participate under this tip reporting program, I will receive important benefits under this agreement:

- If I report to my employer tips at or above the tip rate that has been established for my job, the IRS will not audit my tip income received after the date of this agreement during which the Gaming Industry Tip Compliance Agreement between my employer and the IRS is in effect. If I report tips below such tip rate, the IRS can review my substantiation of that tip income and can make any adjustment necessary to accurately report such income.
- The IRS also will not audit my tip income for any prior tax year during which: (1) I was a participant in a prior tip compliance agreement of my current employer or a former employer, or (2) I had no opportunity to participate in a prior tip compliance agreement because I worked in a job that was not covered by an agreement or because my employer did not have a tip compliance agreement with the IRS.
- If I was eligible to participate in an employer's tip compliance agreement in prior tax years but did not do so, I will not be protected from an IRS audit of my tip income for those prior years, but I will receive protection from audit of my tip income received after the date of this agreement during which the Gaming Industry Tip Compliance Agreement between my employer and the IRS is in effect.
- If I sign this agreement more than 60 days after I first became employed with my current employer, I will be protected from an IRS audit of my tip income received after the date of this agreement during which the Gaming Industry Tip Compliance Agreement between my employer and the IRS is in effect.

By signing below, I agree to fulfill my responsibilities under this agreement and to participate in the Gaming Industry Tip Compliance Agreement between my employer and the IRS. This agreement shall remain in effect so long as there is a Gaming Industry Tip Compliance Agreement between my employer and the IRS, and I have not notified my employer in writing that I wish to terminate this agreement.

Signature and Employee's name printed, address
Social Security Number

APPENDIX D

Model Extension Agreement

The Gaming Industry Tip Compliance Agreement ("Agreement") signed by _____ and the Commissioner of Internal Revenue ("the Parties"), effective on _____, shall expire on _____.

The Parties wish to renew the Agreement, but have not reached final agreement on the terms and conditions of the renewal. In order to allow more time to finalize and execute a renewal, the Parties agree to extend the original Agreement until _____.