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## **Proposed Tip Reporting Agreement for Use in the Gaming Industry**

**Announcement 96-106**

### **SUMMARY**

The Internal Revenue Service is considering expansion of its Market Segment Understanding (MSU) Program as a means to enhance tax compliance

through taxpayer education and voluntary advance agreements instead of traditional audit techniques. This announcement solicits comments on a draft model MSU Agreement entitled Tip Rate Determination Agreement (Gaming Industry).

### **OVERVIEW**

The Service developed its MSU Program in 1993 as a means of enhancing tax compliance while reducing taxpayer burden. In essence, the Program envisions that the Service and taxpayers in particular market segments would work together to improve tax compliance in those areas through educational efforts and other collaborative approaches rather than through traditional audit techniques.

Since 1992, the Service has entered into tip agreements with taxpayers in the gaming industry in Nevada. In general, these tip agreements establish a “tip rate” for dealers, based on information

provided by the employer, and set forth an understanding that both the employer and employees who report tips at the established rate will generally not be subject to challenge by the District Director. The decision to enter into a tip agreement is entirely optional on the part of the employer and each employee; however, the Service will generally not agree to a tip agreement with a particular taxpayer unless at least 75 percent of its affected employees elect to participate.

A number of other taxpayers in the gaming industry have expressed interest in entering into a tip agreement with the Service. To ensure consistency in these agreements and provide an opportunity for public comment prior to expanding this aspect of the MSU Program, the Service has developed a draft form of tip agreement that could be used as a model for the gaming industry. This draft model Agreement is entitled "Tip Rate Determination Agreement (Gaming Industry)" and is attached to this announcement.

#### COMMENTS

Written comments must be received by December 14, 1996. Send submissions to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 96-106), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. 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/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 96-106), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

#### 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 Kathy Mort, MSU program administrator, Office of Specialty Taxes, on (202) 376-0687 (not a toll-free call).

Draft release date: 10/15/96

### TIP RATE DETERMINATION AGREEMENT (Gaming Industry)

between

Department of the Treasury-Internal  
Revenue Service  
and

\_\_\_\_\_  
[Name of Employer]

\_\_\_\_\_  
(Taxpayer-Employer's name, address, and identifying number) ("Employer") and the District Director of Internal Revenue ("District Director") hereby agree to the following Tip Rate Determination Agreement ("Agreement" or "Gaming TRDA").

All employees who receive tips are required (1) to keep contemporaneous and accurate records of the tips received, (2) to report the tips received to their employer at least monthly, and (3) to report those tips on their federal income tax returns.

This document has been developed pursuant to the Market Segment Understanding (MSU) Program. The purpose of this document is to implement a program (1) to ensure maximum compliance by the employees of the Employer with those provisions of the Internal Revenue Code of 1986, as amended, relating to tip income; and (2) to avoid disputes under section 3121(q) of the Code. This program will minimize the burden on the Employer resulting from tip compliance programs of the District Director and reduce the enforcement costs of the District Director.

The parties therefore agree as follows:

#### I. DEFINITIONS

A. *District Director* means the District Director of Internal Revenue for \_\_\_\_\_ [insert name of District] or designee.

B. *Gaming establishment* means a casino or other building, vessel, or room used for gambling. It includes land and water based establishments, bingo parlors, card rooms, slot machine and keno facilities, and any similar place where wagering is conducted.

C. *Employee* means an individual who:

1. is described in an Occupational Category defined in section I.E.,

2. has completed more than 30 consecutive days of service with the Employer, and

3. receives tips (directly or indirectly) of at least \$20 a month during the course of the Employee's employment.

D. *Employer* means \_\_\_\_\_ [insert name].

E. *Occupational Category* means a category listed in Attachment A.

F. *Participating Employee* means an Employee who—

1. gives to the Employer a signed Tipped Employee Participation Agreement ("TEPA") (Attachment B), indicating participation in the tip reporting program, and

2. in accordance with this Agreement, reports tips to the Employer, as required by law, at or above the tip rate established for the Employee's Occupational Category.

At the option of the Employer, a *Participating Employee* may also include a tipped employee with 30 or fewer days of service who has given the Employer a signed TEPA.

G. *Tip Rate* means the applicable rate described in Section III.

#### II. COMMITMENT OF EMPLOYER

A. *Records maintenance requirements*. While this Agreement is in effect, and in addition to records otherwise required to be maintained, the Employer agrees to maintain the following records:

1. *Employee records*. For each Employee, the Employee's name, address, and social security number; the Employee's Occupational Category or Categories (as defined in section I.E.); the Employee's wage rate or rates; the Employee's reported tips and charged tips (if any); and the Employee's sales (if appropriate), shift(s), and hours.

2. *Gaming establishment records*. If the Employer is not otherwise required, by state statute or regulation, to maintain records of tips received by gaming establishment Employees,

a. For each instance of toke and chip-cashing, the dollar amount of tokes and chips presented to the cage for cashing by the toke committee (or other representatives of gaming establishment Employees), and

b. For each instance of toke and chip-cashing, a list of the tip splits furnished to the Employer by its Employees or the toke committee (or other representatives of gaming establishment Employees).

3. *Food and beverage operations records*. If the Occupational Categories defined in section I.E. include food or beverage servers,

a. Gross receipts subject to food or beverage tipping, and

b. Charge receipts showing charged tips.

4. *Tip rates records.* For each Occupational Category, all records of data used to determine the tip rates.

The Employer must 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. *Requirements for furnishing information.* The Employer will furnish to the District Director 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, and social security number; the Employee's Occupational Category or Categories (as defined in section I.E.); the Employee's wage rate; the Employee's reported tips and charged tips (if any); and the Employee's sales (if appropriate), shift(s), and hours. 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 the last day of February following each calendar year.

b. *Exception.* No report is required for a calendar year if the Employees reported tips for the calendar year at a rate equal to or greater than the rates established under section III. of this Agreement.

3. *Form 8027.* If the Occupational Categories defined in section I.E. include Employees of one or more food or beverage establishments, a copy of the Forms 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, filed for those establishments with the service center. The copies are due on the last day of February following each calendar year.

C. *Requirements for making records available at the request of the District Director.* At the request of the District Director, the Employer will furnish any of the records identified in section II.A.

D. *Requirements for filing returns and paying and depositing taxes.* The

Employer will comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes.

### III. TIP RATES

A. *Methods of measuring tips.* Depending on the Occupational Category and the Employer's business practices, tips can be measured in different ways. This Agreement contemplates the following types of measurements:

1. *Actual tips.* Actual tips generally apply to Employees in Occupational Categories where pooling of tips is common. Generally, they pool the tips collected during a shift and split the total among the Employees of the Occupational Category who worked the shift.

2. *Tip rates.* Tip rates generally apply to Employees in Occupational Categories where pooling of tips is not common. The rate may be a percentage of sales, a dollar amount per hour or shift, a dollar amount per drink served, a dollar amount per dealing hour, or other accurate basis of measurement.

B. *Methods for determining tip rates.* The Employer will determine tip rates for the Occupational Categories based on information available to the Employer, historical information provided by the District Director, and generally accepted accounting principles. The rates will specify whether the tips are received as a percentage of sales, a dollar amount per hour or shift, a dollar amount per drink served, a dollar amount per dealing hour, or on another basis.

C. *Initial tip rates.* The initial tip rate approved for each Occupational Category is shown on Attachment A. Where Employees pool and split tips, the "Actual tips" method will be indicated on Attachment A.

D. *Determination of subsequent tip rates and Occupational Categories.*

1. *Annual review.* The Employer will review annually, on a calendar year basis, the tip rates assigned to its Occupational Categories. In connection with this review, the Employer may review its Occupational Categories. The initial rates for each Occupational Category shown on Attachment A will apply to the first full calendar year of this Agreement.

2. *Procedures.*

a. *Employer submission.* If the Employer believes that a revision of one or more rates or Occupational Categories is appropriate, the Employer will submit

proposed revisions to the District Director by September 30. If the Employer fails to submit a proposed rate revision by September 30, the Employer will be treated as having submitted the rate in effect for the current year.

b. *District Director review.* The District Director will review the proposed rates and notify the Employer in writing of its approval or disapproval by November 30. If the District Director does not approve one or more proposed rates, the existing rate or rates will be continued until no later than the last day of the following February. If the Employer and the District Director are unable to agree upon a rate or rates by the last day of the following February, this Agreement will terminate pursuant to section V.C.

3. *Effective date of revised rates and Occupational Categories.* Approved revised rates and Occupational Categories for a calendar year will become effective on the later of (1) January 1 of the calendar year, or (2) the first day of the month following the date the Employer and the District Director agree upon a revised rate.

### IV. COMMITMENT OF DISTRICT DIRECTOR

A. *Participating Employee.* The District Director agrees that it may examine a Participating Employee's tip income for any period for which a TEPA is in effect only if the Employee reports tips at a rate that is less than the tip rate for the Employee's Occupational Category.

B. *Employer.*

1. *General rule.* Except as provided in section IV.B.2. below, any section 3121(q) notice and demand issued to the Employer by the District Director with respect to tips received by Employees in the Occupational Categories defined in section I.E. shall be based solely on amounts reflected on one or more of the following forms:

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.

2. *Special rules.*

a. *Termination.* In the event of a termination under section V., the general rule in section IV.B.1. will apply with respect to tip income actually received

by (or deemed under section 3121(q) of the Code to have been paid to) Employees during the period from the effective date of this Agreement until the effective date of termination.

b. *Ongoing tip examination or TRDA validation.* If the District Director initiated a tip examination or TRDA validation of the Employer prior to the date the parties enter into this Agreement, the District Director may issue a section 3121(q) notice and demand with respect to any calendar quarters under tip examination or validation.

c. *Compliance review.* The District Director may evaluate the Employer and its Participating Employees for compliance with the provisions of this Agreement.

**V. TERMINATION**

A. *Termination by Employer.* The Employer may terminate this Agreement at any time.

B. *Termination by District Director.* The District Director may terminate this Agreement if:

1. *Lack of Employee participation.* At the end of any two consecutive calendar quarters, less than 75 percent of the Employees in the Occupational Categories defined in section I.E. are Participating Employees,

2. *Failure of Employer to comply with section II.* The Employer fails to meet any of the requirements of section II., or

3. *Other.* The Internal Revenue Service or another federal agency pursues an administrative or judicial action relating to the Employer or a person that is a related party to this Agreement.

C. *Termination upon failure of parties to agree to revision of tip rates.* If the Employer and the District Director fail to agree to a revision of any of the tip rates under the procedures set forth in section III.B.2.b., this Agreement will terminate.

D. *Notice of termination and effective date.* Any termination under section

V.A. or B. must be in writing and will be effective on the first day of the calendar quarter following the date of the notice.

**VI. MISCELLANEOUS**

A. *Effective date of agreement.* This Agreement is effective when executed by the District Director.

B. *Examinations and/or inspections of books and records.* The inspection of books of account or records pursuant to a tip examination or compliance review will not preclude or impede (under section 7605(b) of the Code, section 530(a)(2) of the Revenue Act of 1978, or any administrative provisions adopted by the Service) a later examination of a return or inspection of books of account or records with respect to any tax period involved in the tip examination or compliance review. The Service need not comply with any applicable procedural restrictions (for example, providing notice under section 7605(b)) before beginning such examination or inspection.

C. *Notices.* All correspondence pertaining to this Agreement must be sent to the parties to this Agreement at the addresses stated below, unless notified in writing of a change of address. In the event of a change of address, all correspondence must be sent 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.

D. *Authority.* The Employer represents that it has the authority to enter into this Agreement.

E. *Statutory changes.* The Commissioner may terminate this Agreement at any time following a significant statutory change in the FICA taxation of tips.

F. *Sunset provision.* The Commissioner of Internal Revenue may terminate prospectively the Tip Rate Education Program or this TRDA after, 200.

**VII. PAPERWORK REDUCTION ACT**

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

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

The estimated total annual reporting and/or recordkeeping burden is 4,342 hours.

The estimated annual burden per respondent/recordkeeper varies from 12 hours to 99 hours, depending on individual circumstances, with an estimated average of 43 hours. The estimated number of respondents and/or recordkeepers is 100.

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

EMPLOYER:

INTERNAL REVENUE SERVICE

\_\_\_\_\_

\_\_\_\_\_ District

(Name of Employer)

\_\_\_\_\_

\_\_\_\_\_

(Signature)

(Signature)

BY: \_\_\_\_\_

BY: \_\_\_\_\_

(Director's Name)

TITLE: \_\_\_\_\_

TITLE: District Director

ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
(Headquarters street address)

\_\_\_\_\_  
(Street address)

\_\_\_\_\_  
(City, state, ZIP code)

\_\_\_\_\_  
(City, state, ZIP code)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

### TRDA (Gaming Industry)

#### Attachment A

#### [sample format]

#### *Occupational Categories*

#### *Initial Tip Rates*

Dealers

actual tips

Food servers

\_% of sales

Cocktail servers

\_% of sales

Bartenders

\_% of sales

Room service food servers

\_% of sales

Bell persons

\$ /

Valets

\$ /

### TRDA (Gaming Industry)

#### Attachment B

#### 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 (Gaming Industry) between my employer and the District Director of Internal Revenue, 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 District Director for my Occupational Category.

#### EMPLOYEE

Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Home address: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

DATE: \_\_\_\_\_

#### Attachments:

Copy of TRDA (Gaming Industry) and Attachment A (Occupational Categories and Tip Rates)