

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 31.6053-1: Report of tips by employee to employer

Rev. Proc. 2006-30

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SECTION 1. PURPOSE

This revenue procedure sets forth the requirements for participating in the Attributed Tip Income Program (ATIP). ATIP provides benefits to employers and employees similar to those offered under previous tip reporting agreements without requiring one-on-one meetings with the Service to determine tip rates or eligibility.

SECTION 2. BACKGROUND

.01 The Internal Revenue Service is expanding its Tip Rate Determination/Education Program (TRD/EP), which is designed to enhance tax compliance among tipped employees through taxpayer education and voluntary agreements instead of traditional audit techniques.

.02 The Service developed the TRD/EP in 1993 as a means of enhancing tax compliance while reducing taxpayer burden and in 2004, the Service extended the TRD/EP program indefinitely. In TRD/EP, the Service works with taxpayers in industries in which tipping is customary to improve tax compliance. The TRD/EP currently offers employers operating food and beverage establishments two types of agreements. The Tip Rate Determination Agreement (TRDA) requires that tips be reported at or above a specific rate negotiated between the employer and the Service in return for certain benefits. The Tip Reporting Alternative Commitment (TRAC) agreement requires that the employer provide ongoing education to tipped employees on tip reporting procedures in return for certain benefits. A variation on TRAC, the Employer-designed Tip Reporting Alternative Commitment (EmTRAC), allows the employer considerable latitude in designing its educational program and tip reporting procedures. Employers who enter into these agreements and comply with their terms are not subject to challenge on audit with respect to the amount of tips they are reporting as wages. TRDA provides similar benefits to employees. Although not set forth in the TRAC agreements, if employees follow the procedures their employer describes in the required educational sessions, the Service will not challenge the amount of tips they report to their employers as wages. The Service also offers the Gaming Industry Tip Compliance Agreement (GITCA) which is an agreement designed to meet the needs of establishments in the gaming industry. The decision to enter into TRDA, TRAC, or GITCA is entirely voluntary on the part of the employer.

.03 ATIP is a new reporting alternative for employers in the food and beverage industry designed to promote compliance by employers and employees with the provisions of the Internal Revenue Code (the Code) governing tip income, to reduce disputes on audit, and to reduce filing and recordkeeping burdens. ATIP is being offered in addition to the existing TRD/EP programs described in section 2.02 of this revenue procedure. ATIP differs from the existing programs in that it does not require an employer to enter into an individual agreement with the Service. ATIP does not alter any of the existing TRD/EP programs. Employers currently participating in an existing TRD/EP program may elect to switch to ATIP. See Section 10 for additional information.

.04 The requirements for participation in ATIP for employers and employees are set forth in this revenue procedure. The benefits of participation for both employers and

employees are also set forth. Participation by employers and employees is entirely voluntary. An employee cannot participate in ATIP unless he or she is employed by a participating employer.

.05 Pilot Program. The ATIP is a pilot program. Employers may elect to participate in ATIP on a calendar year basis for each of the three calendar years beginning on or after January 1, 2007.

SECTION 3. DEFINITIONS

.01 For purposes of this revenue procedure, the following definitions apply.

.02 Attribution date. The term "attribution date" means the date on which tips attributed to participating employees are treated as wages for federal employment tax purposes.

.03 Charge receipts. Charge receipts shall include credit card charges and charges under any other credit arrangement (e.g., house charges, city ledgers and charge arrangements to country club member.) Debit card sales are included in charge receipts.

.04 Charged tips. A tip included on a charge receipt is a charged tip.

.05 Charged tip rate. For each calendar year, the "charged tip rate" for a participating establishment equals (i) the total charged tips reported (or to be reported) on the establishment's Form 8027 for the calendar year immediately preceding the calendar year of participation in ATIP divided by (ii) the total charge receipts reported (or to be reported) on the Form 8027 (sales from charge receipts showing charged tips) for the calendar year immediately preceding the calendar year of participation in ATIP. Example: Total charged tips reported on the establishment's Form 8027 for the preceding calendar year equal \$170,000 and total charge receipts reported on the Form 8027 for the preceding calendar year equal \$1,000,000; the charged tip rate for the establishment for the calendar year would be 17 percent, or 170,000 divided by 1,000,000.

.06 Directly tipped employee. The term "directly tipped employee" means any tipped employee who receives tips directly from customers, including an employee who after receiving tips directly from customers turns all the tips over to a tip pool. Examples of directly tipped employees are waiters, waitresses, and bartenders.

.07 Eligible establishment. The term "eligible establishment" means an establishment where at least 20 percent of the establishment's gross receipts from the sale of food or beverages for the calendar year immediately preceding the calendar year of participation in ATIP are charge receipts showing charged tips.

.08 Employee participation agreement. The term "employee participation agreement" means a document signed by the tipped employee which includes a description of the requirements and benefits of employee participation in the ATIP (specifically including the employee's agreement to report on his or her federal income tax return at least the amount of tip income attributed to him or her under ATIP and reported on the employee's Form W-2 as tips), a description of the attribution method used by the establishment, and a provision for revocation. An employer may also use the employee participation agreement to provide an estimate of the tip amount that will be attributed. A document which conforms to the model employee participation

agreement provided in Appendix of this revenue procedure satisfies this definition.

.09 Food or beverage employee. The term “food or beverage employee” means an employee who provides services in connection with the provision of food or beverages. Such employees include, but are not limited to, waiters, waitresses, busboys, bartenders, persons in charge of seating (such as a hostess, maitre d’ or dining room captain), wine stewards, cooks, and kitchen help. Examples of employees who are not food or beverage employees include, but are not limited to, coat check persons, bellhops and doormen.

.10 Food or beverage establishment. The term “food or beverage establishment” means an establishment that provides food or beverages in which the tipping by customers of employees serving food or beverages is customary.

.11 Formula tip rate. The term “formula tip rate” equals the charged tip rate minus two percentage points.

Example. The charged tip rate for the establishment, based on data from Form 8027, is 17 percent. The formula tip rate is thus 15 percent (the charged tip rate minus two percentage points, $.17 - .02 = .15$).

.12 Indirectly tipped employee. The term “indirectly tipped employee” means a tipped employee who does not normally receive tips directly from customers. Examples of indirectly tipped employees are busboys, service bartenders and cooks. An employee, such as a maitre d’, who receives tips both directly from customers and indirectly through tip splitting or tip pooling shall be treated as a directly tipped employee.

.13 Nonparticipating Employee. The term "nonparticipating employee" means any tipped employee who is not a participating employee.

.14 Participating Employee. The term "participating employee" means any tipped employee who has a signed employee participation agreement in effect.

.15 Payroll period. The term “payroll period” means the period of service for which a payment of wages is ordinarily made to the employee by his or her employer.

.16 Tip compliance agreement. The term “tip compliance agreement” means any of the following –

(1) A Tip Rate Determination Agreement (TRDA) for use by employers in the food and beverage industry, Ann. 2000-23, 2000-1 C.B. 992;

(2) A Tip Reporting Alternative Commitment (TRAC) Agreement, Ann. 2000-22, 2000-1 C.B. 987;

(3) An approval letter received pursuant to the Employer-Designed Tip Reporting Alternative Commitment (EmTRAC), Notice 2000-21, 2000-1 C.B. 967; or

(4) A Gaming Industry Tip Compliance Agreement (GITCA) for a food or beverage establishment, Rev. Proc. 2003-35, 2003-1 C.B. 919.

.17 Tipped employee. The term “tipped employee” of a food or beverage establishment means an employee who is a food or beverage employee who customarily receives tip income from employment at that establishment. An employee who occasionally receives small amounts of tip income is not a tipped employee. Generally, an employee who receives less than \$20 per month in tip income would not be considered as customarily receiving tip income. For purposes of this revenue procedure the term tipped employee includes a directly tipped employee and an indirectly tipped employee, as defined in sections 3.06 and 3.12 of this revenue

procedure.

SECTION 4. EMPLOYER PARTICIPATION IN ATIP

.01 Employers participate in ATIP establishment by establishment. An employer may participate in ATIP with respect to an establishment only if it is an eligible establishment as defined in section 3.07 of this revenue procedure. In order to participate with respect to an establishment, an employer must satisfy all of the requirements in this section for that establishment. If an employer has more than one eligible establishment, the employer must satisfy the requirements for each establishment that is going to participate. An employer may have both participating and nonparticipating establishments.

.02 Employee participation.

(1) General rule. At least 75 percent of the establishment's tipped employees must have agreed to participate and signed an employee participation agreement as of the last day of the first payroll period ending on or after January 1 of the calendar year. In addition, the employer must make a good faith effort to maintain the participation rate throughout the year. For purposes of this rule, an employer may treat an employee who signs an employee participation agreement as a participating employee until the first day of the first payroll period for which the employee submits a tip report for less than the attributed tips or which follows the date on which the employee gives the employer a signed notice revoking participation in ATIP.

(2) Good faith effort. A good faith effort means periodic review of the level of participation, steps taken to encourage more tipped employees to participate whenever the rate falls below the required 75 percent, and steps taken to offer participation to all new tipped employees. An employer that manipulates the participation rate so as to qualify at the beginning of the year even though there is a significant and sustained decline in participation for other parts of the year will not be considered to have made a good faith effort.

(3) Annual qualification. An establishment that participated in ATIP in a prior year but does not satisfy the 75 percent employee participation requirement as of the last day of the first payroll period ending on or after January 1 of the applicable year is not eligible to participate in that year.

Example. Establishment satisfies the 75 percent participation requirement for Year 1, determined as of the last day of the first payroll period ending on or after January 1 of Year 1. Notwithstanding the good faith efforts of the employer, the participation rate drops over the course of the year and on December 31 of Year 1, only 65 percent of tipped employees remain as participants. Also, as of the last day of the first payroll period ending on or after January 1 of Year 2, only 65 percent of tipped employees remain as participants. While the establishment retains the benefits of the ATIP for Year 1, it is not eligible to participate in the program for Year 2.

.03 Notification of Service. An employer must notify the Service of its participation in ATIP. Notification must be provided for each year in which the employer participates. If an employer has more than one food or beverage establishment, the employer must provide separate notification for each establishment for each year. An employer shall use a copy of a timely filed Form 8027 for the prior year for purposes of notifying the

Service of its participation in ATIP for the current year for an establishment regardless of whether the employer is otherwise required to file Form 8027 for that establishment. The employer's participation with respect to an establishment is effective as of January 1 of the year in which the Form 8027 is filed. For example, to elect participation in ATIP for 2007, the employer files a Form 8027 for 2006. If the employer is required to file Form 8027 for an establishment, the employer notifies the Service of its intent to participate with respect to a particular establishment by timely filing Form 8027 for that establishment and sending a copy of the completed form, with the box checked "ATIP" to the address in section 13 of this revenue procedure by the due date for filing the Form 8027 (paper returns are due February 28, or February 29 for calendar year 2008, and electronic returns are due March 31). If an employer is not required to file the Form 8027 for an establishment (for example, an establishment with less than 10 employees), the employer completes lines 1 – 5 of a Form 8027 for the calendar year preceding the year for which the establishment is electing to participate in ATIP for that establishment, signs the form, and sends the form, with the box checked "ATIP" to the address in section 13 by February 28.

.04 Tip attribution. The employer must select a period for computing the total tip amount and attributing tips to all tipped employees. The period may be no longer than a month and may be shorter if the employer so chooses. The employer must also select an attribution date on which to attribute the total tip amount to all tipped employees. The attribution date may be no later than the tenth day following the last day of the period for which the total tip amount is computed, and it may not be earlier than the last date on which an employee may submit to the employer a report of actual tips received for the period for which the total tip amount was computed. The employer must compute the total tip amount for the establishment and attribute tips as follows.

(1) As of the last day of the period determined by the employer to compute the total tip amount, the employer computes the total tip amount for the establishment by multiplying the total gross receipts from food and beverage sales of the establishment for the period by the formula tip rate.

(a) Except as provided in paragraph (b) below, for each year the employer computes the formula tip rate using the charged tip rate calculated based upon the information reported (or to be reported) on the establishment's Form 8027 for the preceding calendar year. For example, for employers participating in 2007, the formula tip rate is computed by reference to data on the 2006 Form 8027.

(b) For periods ending on or after January 1 and before March 1 of any year, the employer may compute the total tip amount using the formula tip rate used by the establishment in December of the prior year. For example, for periods ending on or after January 1 and before February 28, 2007, the employer may compute the total tip amount using a formula tip rate computed by reference to data on the establishment's 2005 Form 8027.

(2) The employer attributes the total tip amount computed in section 4.04(1) of this revenue procedure to all tipped employees without regard to whether the tipped employee is a participating or nonparticipating employee. The employer attributes tips to all tipped employees using any reasonable attribution method. The method used must be the method described in the employee participation agreement(s) used by the employer. If, during the calendar year, the employer modifies the attribution method,

the employer must provide written notice to the participating employees at least seven days prior to the first day of the payroll period for which the employees will be subject to the new attribution method.

(a) An attribution method is reasonable if it is applied consistently to similarly situated tipped employees and approximates the relative amounts of tips received by different categories of similarly situated tipped employees. An attribution method that approximates the actual distribution of tips, rather than tracking the amount actually distributed, can be reasonable. For example, attributing the total tip amount based on hours worked by each tipped employee as a percentage of total hours worked by all tipped employees is a reasonable method if it reasonably approximates the actual distribution of tips, even if the practice of employees retaining tips is based on percentage of receipts, rather than hours worked.

(b) An attribution method will not be considered reasonable if the employer computes the total amount of attributed tips, subtracts tips reported by nonparticipating employees, and attributes the difference to all tipped employees.

(c) Following is an example of a reasonable attribution method:

Establishment R serves lunch five days a week and dinner six days a week. R employs eight directly tipped employees, A, B, C, D, E, F, G, and H. Employee A works 20 hours and employee B works 25 hours per week during the lunch shift. Employees C, D, E, F, and G work various hours per week during the dinner shift. Employee H is the bartender and works 40 hours per week spread between the lunch and dinner shifts. Establishment R notified the Service that it would participate in ATIP in 2007. Employees A, B, C, D, E, and F are participating employees while employees G and H are nonparticipating employees. Using the data from its 2006 Form 8027, Establishment R calculated its formula tip rate to be 13%. Establishment R computes the total tip amount weekly and uses a two step attribution method. First, Establishment R allocates a portion of the total tip amount to different groups of similarly situated employees based upon the average percentage of gross receipts attributable to lunch, dinner and the bar. Establishment R then further attributes tips to each employee in its three categories: lunch, dinner and the bar.

10% of the total tip amount is allocated to the lunch shift and attributed to employees A and B;

60% of the total tip amount is allocated to the dinner shift and attributed to employees C, D, E, F, and G; and

30% of the total tip amount is allocated to the bar and attributed to employee H.

Tips for the lunch shift employees are allocated among the employees based on the employee's percentage of total hours worked for the shift. Tips for the dinner shift employees are allocated among the employees based on the percentage of total dinner receipts from customers served by that employee.

In a typical week, Establishment R has \$20,000 in gross receipts. R's total tip amount is \$2,600 ($\$20,000 \times 13\% = \$2,600$).

The total tip amount is allocated to similarly situated employees as follows:

$\$2600 \times 10\% = \260 allocated to the lunch shift

$\$2600 \times 60\% = \1560 allocated to the dinner shift

$\$2600 \times 30\% = \780 allocated to the bar

The amounts are attributed to all tipped employees, participating and or nonparticipating.

Lunch shift employees (based upon hours worked)	
A	$\$260 \times 20/45 = \115.56
B	$\$260 \times 25/45 = \144.44
Dinner shift employees (based upon percentage of dinner receipts)	
C	$\$1560 \times 27\% = \421.20
D	$\$1560 \times 20\% = \312.00
E	$\$1560 \times 20\% = \312.00
F	$\$1560 \times 18\% = \280.80
G	$\$1560 \times 15\% = \234.00
Bartender (based upon percentage of gross receipts)	
H	$\$780.00$

The amounts attributed to the participating employees A, B, C, D, E, and F are treated as if the employees reported those amounts to the employer, and the employer treats these amounts as wages for purposes of Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and income tax withholding (ITW). Employee G reported tips of \$275.00 to the employer and employee H reported tips of \$697.00 to the employer. Since G and H are not participating employees in ATIP, the amounts they reported to the employer, and not any tips attributed to them under the attribution method, will be treated as wages for purposes of FICA, FUTA and ITW.

.05 Treatment of attributed tips as wages for purposes of withholding, reporting, and payment of employment taxes.

(1) Participating employees. On the attribution date, the employer must treat tips attributed to the participating employees as if each participating employee had reported such attributed tips on a written statement furnished to the employer as tips received by the employee, as required by section 6053(a) of the Code. Thus, the employer must comply with the requirements to withhold, pay, and report FICA, FUTA, and ITW on a timely basis as applicable to the attributed tips.

(2) Nonparticipating employees. Tips attributed to nonparticipating employees are not treated as reported on a written statement furnished to the employer as tips received by the employee. Thus, tips attributed to nonparticipating employees are not treated as wages for FICA, FUTA, and ITW purposes. As under existing law, each nonparticipating employee must report the amount of tips actually received to the employer, and the employer must treat the reported amount of tips as wages.

(3) Tip allocations. If an employer is required to allocate tips pursuant to section 6053(c), the employer shall allocate tips only to nonparticipating employees, and then only in such amount as is allocable to them pursuant to Treas. Reg. § 31.6053-3(d), (e), and (f). No tips may be allocated to participating employees.

.06 Reconciling with reports of actual tips received. A participating employee retains the right to report tips actually received for a given period to the employer. See Section 5.07 of this revenue procedure. If a participating employee reports actual tips received for a given period to the employer in an amount that exceeds the tips that otherwise would have been attributed to the employee for that period, the excess must also be included in the participating employee's wages for purposes of withholding, reporting and paying FICA, FUTA, and ITW, as applicable. If a participating employee reports

actual tips received for a given period to the employer in an amount that is less than the tips that otherwise would have been attributed to the employee for that period, the employer shall treat only the reported amount (and no part of the attributed tips) as wages for purposes of withholding, reporting and paying FICA, FUTA, and ITW for that period.

.07 Notification of participating employees as to amount of attributed tips.

If in any calendar year, an employer reports on the participating employee's Form W-2 an amount of tips that includes both attributed tips and tips actually reported to the employer pursuant to section 6053(a) of the Code, the employer shall provide the participating employee with an additional written statement showing the amount of the tips reported on the Form W-2 that are attributed tips.

.08 Employer recordkeeping. For each year the employer participates in ATIP the employer shall maintain the following records for each establishment to be made available to the Service upon request.

(1) Copies of employee participation agreements signed by employees.

(2) Employee records. For each tipped employee, the employee's name, address, social security number, date hired, status as directly or indirectly tipped employee, reported tips, the amount of tips attributed, and any other wages paid.

(3) Tip records.

(a) All records of information used to compute the total tip amount for the establishment, to determine the attribution method used, and to apply the attribution method to the total tip amount for each period, including records sufficient to support the amount of tips attributed to each tipped employee, both participating and nonparticipating, and any records of distributions of aggregate or pooled tips.

(b) Gross food or beverage receipts subject to tipping.

(c) All charge receipts showing charged tips.

(d) All tip reports submitted by tipped employees.

(e) All charge receipts or electronic charge records.

(4) A copy of the Form 8027 used to notify the Service of participation in ATIP.

(5) A copy of any letter sent to notify the Service of an establishment's termination of participation in ATIP.

The employer must retain the records described in this section for at least 4 years dating from April 15 of the calendar year following the calendar year to which the records relate. An employer that participates in ATIP is not relieved of the obligation to maintain records related to tipped employees required under statutes, regulations or other rules administered by other governmental agencies.

.09 Records to be furnished to the Service. With respect to each participating establishment, for each calendar year of participation in ATIP, the employer shall furnish the following records on or before March 31 of the succeeding calendar year to the address in section 13 of this revenue procedure.

(1) Description of the attribution method as provided in the employee participation agreement(s).

(2) An annual report providing each tipped employee's name, address, and social security number, status as a participating or nonparticipating employee, and the amount attributed to each tipped employee.

(3) Amount reported to each tipped employee as Social Security tips on Form W-2.

.10 Filing returns and paying and depositing taxes. The employer must comply with all applicable requirements for filing federal tax returns and depositing and paying all federal taxes. If an employer is required to file a Form 8027 with respect to a participating establishment, the employer must comply with the requirements for filing Form 8027. On the Form 8027 filed for calendar years in which an establishment participates in ATIP, the employer shall treat as reported tips on line 4c an amount equal to the sum of the tips attributed under ATIP to participating employees, the amount of reported tips in excess of the attributed tips reported by participating employees (if any), and the tips reported by nonparticipating employees.

.11 Fulfilling requirements on annual basis. Participation in ATIP is on a calendar year basis. Employers must attribute tips and otherwise comply with the requirements of ATIP beginning with the first period ending on or after January 1 of the year for which the employer notifies the Service of its intent to participate.

.12 Accuracy requirement. The information reported on the Form 8027 must be accurate.

.13 General compliance. Except as otherwise provided under this revenue procedure, the employer shall comply with all rules under the Code and Treasury regulations applicable to employers with respect to a participating establishment.

SECTION 5. EMPLOYEE PARTICIPATION IN ATIP

.01 In order to participate and receive the benefits set forth in section 6 of this revenue procedure, an employee must satisfy all of the requirements in this section.

.02 The employee must be a tipped employee.

.03 The employee must sign an employee participation agreement with the employer. If an employee works at more than one participating establishment owned or operated by the employer, the employee must sign a separate employee participation agreement for each establishment.

.04 The employee must report on his or her federal income tax return at least the amount of tip income attributed to him or her under ATIP and reported on the employee's Form W-2 as tips. A participating employee may report tips on his or her federal income tax return below or above the amount of tip income attributed to him or her under ATIP and reported on the employee's Form W-2 as tips. However, any participating employee who fails to report on his or her federal tax return all of the tips reported by the employer on the employee's Form W-2 for that year will not receive the benefits provided by section 6.02 of this revenue procedure. An employee who reports less than the amount of tips reported by the employer on Form W-2 must be able to substantiate, with adequate books and records, that the tip income earned was less than the amount reported on the Form W-2.

.05 Period of participation.

(1) General rule. Except as provided in section 5.04 of this revenue procedure, a participating employee receives the benefits of ATIP for periods beginning after the later of (1) the effective date of the employer's participation (see section 4.03) or (2) the first payroll period in which the employee's participation agreement is in effect.

(2) Special rule for new hires. An employee hired after the first pay period of the year is treated as a participating employee as of the date of hire if the employee

provides the employer with a signed employee participation agreement within 30 days of the date of hire.

.06 A participating employee is not required to report tips to his or her employer for any payroll period beginning with the first payroll period in which the employee's participation agreement is in effect and continuing with every payroll period thereafter until the employee revokes his or her employee participation agreement, or the employer notifies the employee that the employer is no longer participating in ATIP.

.07 Consequences of reporting tips to the participating employer. A participating employee retains the right to report tips to his or her employer. If the participating employee reports an amount of tips for a given period that exceeds the amount the employer has attributed to that employee for that period, the excess shall be treated as wages for purposes of withholding, paying and reporting FICA, FUTA, and ITW, as applicable. See section 4.06 of this revenue procedure. Making such a report does not affect the employee's status as a participating employee. If the participating employee reports an amount of tips for a given period that is less than the amount the employer will attribute to that employee for that period, the participating employee revokes his or her employee participation agreement, effective the first day of the payroll period for which the employee reports an amount of tips less than the amount the employer would have attributed to the employee.

SECTION 6. BENEFITS OF PARTICIPATION IN ATIP

.01 Benefits to the employer. The Service will act as follows with respect to an employer that satisfies all the requirements of section 4 of this revenue procedure with respect to one or more establishment:

(1) The Service will not initiate any tip examinations of a participating establishment with respect to any period during which the establishment is participating in ATIP.

(2) Code section 3121(q) notice and demand. Any section 3121(q) notice and demand issued to the employer with respect to a participating establishment relating to any period during which the establishment is participating in ATIP 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 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; or

(c) The reporting of additional tip income by a participating employee.

At the Service's discretion, the Service may continue any ongoing examination of the employer or establishment begun by the Service for a taxable period before the employer notifies the Service of its intent to participate in ATIP.

(3) A participating establishment will be considered in compliance with the reporting requirements of section 6053(c)(2) and (3) of the Code regarding allocation of tips to participating employees for the taxable periods during which the employer's participation in ATIP remains in effect.

.02 Benefits to participating employees. The Service will act as follows with respect to a participating employee who meets all the requirements of section 5 of this revenue procedure.

(1) The Service will not examine a participating employee's tip income with respect to the participating establishment for any period during which the employee is a participating employee, provided the employee reported as wages on his or her federal income tax return at least the amount of attributed tips reported to the employee in connection with employment at the participating establishment on Form W-2. The Service may examine a participating employee's tip income with respect to the participating establishment for any period if the employee reports on his or her federal income tax return less than the amount of tip income attributed to him or her under ATIP and reported in connection with employment at the participating establishment on the employee's Form W-2 as tips.

(2) If an employee becomes a participating employee more than 30 days after becoming employed as a tipped employee, the Service may examine the participating employee's tip income received in connection with employment at the participating establishment before the employee becomes a participating employee. At the Service's discretion, the Service may continue any ongoing examination of any tipped employee of the employer started by the Service before the effective date of the employer's participation in this program.

.03 Status of nonparticipating employee. A nonparticipating employee is subject to the full range of compliance and enforcement procedures available to the Service including examination of tip income for any time period. 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 for the Service to develop the tip rates of nonparticipating employees including information in possession of the participating employer.

SECTION 7. LOSS OF PROGRAM BENEFITS

.01 Employer. An employer will lose the protections provided in section 6.01 of this revenue procedure with respect to an establishment if the employer fails to comply with any of the requirements of section 4 with respect to that establishment. If the failure to comply with one or more requirements occurs during the calendar year, the employer will not be permitted to attribute tips to participating employees for any remaining portion of the calendar year, and all tipped employees must report tips in accordance with the Code and regulations. An employer that loses the ability to participate in ATIP during the calendar year must notify the employees of that establishment that as of the start of the next payroll period, it will no longer attribute tip amounts to employees as provided in section 4 and that employees must begin reporting tips to the employer as required by section 6053(a) of the Code. Such notice must be provided immediately after receipt of written notice from the Service that the establishment has lost ATIP program benefits and in no event later than the last day of the payroll period in which written notice from the Service is received. If an employer fails to notify employees that it will no longer attribute tip income, the employer (but not the participating employees) will lose the

protections provided in section 6 of this revenue procedure for the entire calendar year, regardless of when the employer stopped attributing tip income.

.02 Employee. If the participating employee reports an amount of tips for a given period that is less than the amount the employer would have attributed to that employee for that period, the participating employee revokes his or her employee participation agreement, effective the first day of the payroll period for which the employee reports an amount of tips less than the amount the employer would have attributed to the employee. On that date the employee loses the benefits of section 6.02 of this revenue procedure.

SECTION 8. REVOCATION

.01 Employer revocation. For an employer to terminate participation in ATIP for an establishment prior to the end of the calendar year, the employer must notify the Service in writing by sending a letter to the address in section 13 of this revenue procedure in advance of the first day of the first payroll period for which the establishment will not participate in ATIP. An employer must also notify employees of the establishment that it will no longer participate in ATIP and that employees must begin reporting their tips as required by section 6053(a) of the Code. An employer may satisfy the employee notification requirement by providing each tipped employee with a copy of the letter sent to the address in section 13 of this revenue procedure at least seven days prior to the first day of the payroll period for which the employees will be required to report tips.

.02 Employee revocation. An employee who signs an employee participation agreement remains a participating employee until the employee revokes the employee participation agreement. An employee revokes participation in ATIP by providing the employer a signed notice revoking the prior agreement or by reporting tips in an amount less than the amount attributed to the employee. See section 5.07 of this revenue procedure.

(1) An employee who revokes participation may not participate in the establishment's ATIP again during the year and must begin reporting tips to the employer effective the first day of the next payroll period as provided under section 6053 of the Code.

(2) An employee who revokes participation stops receiving the benefits provided under ATIP. The revocation is effective the earlier of the date the employee provides the employer a signed notice revoking the employee's participation agreement or the first day of the payroll period for which the employee reports an amount of tips less than the amount the employer would have attributed to the employee. However, the employee receives the benefits provided under ATIP for the payroll periods during which the employee was a participating employee, provided the employee satisfies the requirements of section 5.04 of this revenue procedure with respect to attributed tips reported on the employee's Form W-2.

.03 Revocation by Service. The Service may revoke an employer's participation in ATIP at any time provided that it gives the employer notice in writing.

SECTION 9. COMPLIANCE REVIEW

.01 Compliance review. The Service may evaluate the employer and its participating employees for compliance with the provisions of ATIP.

.02 Examinations and/or inspection of books and records. A compliance review or other inspection of books and records as required for compliance with ATIP will not be considered an inspection of books and 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.

SECTION 10. EFFECT ON OTHER TIP COMPLIANCE AGREEMENTS

The employer's election to participate in ATIP supersedes and revokes all existing tip compliance agreements between the employer and the Service with respect to the establishment.

SECTION 11. EFFECTIVE DATE

.01 Effective date. This revenue procedure is effective January 1, 2007. However, employers who elect to participate in ATIP for 2007 must attribute tips and otherwise comply with the requirements of ATIP beginning with the first payroll period ending on or after January 1, 2007. See section 4.11 of this revenue procedure.

.02 General termination and sunset provision. The ATIP established by this Revenue Procedure is a pilot program available for the three calendar years beginning on or after January 1, 2007. The ATIP terminates on December 31, 2009, unless the Service issues guidance extending the term. Notwithstanding the foregoing, the Commissioner of Internal Revenue may terminate ATIP at any time.

SECTION 12. 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 1545-2005. 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 section 4, titled Employer Participation in ATIP. This information is required to evaluate the suitability of the Reporting Program for the particular taxpayer. 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 13. ADDRESS

Internal Revenue Service, 201 West River Center Blvd. Stop 5701 G ATTN:
Employment Tax/ATIP Coordinator, Covington, KY 41011.

SECTION 14. CONTACT INFORMATION

The principal author of this revenue procedure Stephen Suetterlein of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information about this revenue procedure contact the IRS Business and Specialty Tax Line at (800) 829-4933 or by e-mail at Tip.Program@irs.gov.

Appendix

Attributed Tip Income Program (ATIP)

Model Employee Participation Agreement

I am a tipped employee of _____ (Employer), I work at _____ (Establishment), and by signing this agreement I am choosing to participate in the Attributed Tip Income Program (ATIP) established by the Internal Revenue Service (IRS) in Revenue Procedure 2006-30.

I understand that the benefits and requirements of ATIP are as follows:

1. Tip reporting not required. As a participating employee in ATIP, I am not required to report tips to Employer for any payroll period beginning with the first payroll period in which this agreement is in effect and continuing with every payroll period thereafter until I revoke this agreement or Employer notifies me that Employer is no longer participating in ATIP.
2. Attributed tips treated as wages. Under ATIP Employer will calculate a total tip amount for all tipped employees in the establishment. A portion of the attributed tips will be treated as if I had reported that amount as tips to Employer and will be treated as my tip income. This amount will be reported on my Form W-2 as tip income in addition to other wages paid to me by Employer.
3. Total tip amount calculation. Employer will calculate the total tip amount for the Establishment by multiplying the gross receipts from food and beverage sales of Establishment by the charged tip rate (based on Establishment's Form 8027 for the prior year) minus two percentage points and attributing the total to all directly and indirectly tipped employees using a reasonable attribution method.
4. Attribution method. The method Employer will use to attribute tips to tipped employees is
[Employers may also use the agreement to provide an estimate of the tip amount that will be attributed.]
5. Attributed tips reported on Form W-2. Tips that are attributed to me under ATIP will be reported in Box 1 of my Form W-2 as tips.
6. Federal income tax returns. To receive the audit protection provided by ATIP I agree to report on my federal income tax return at least the amount of tips Employer reports on my Form W-2. If I report tips below the amount on my Form W-2, I will lose the audit protections offered by ATIP, and will need to have adequate records, such as a daily tip log to substantiate that the amount of tip income I received was less than the amount reported on my Form W-2.
7. Audit protection. If I report on my federal income tax return the tip amount reported on the Form W-2 that I receive from Employer in connection with my employment at [establishment], the IRS will not audit my tip income received in connection with my employment at [establishment] for the period beginning with

the date of this agreement and continuing until the earlier of termination of my employment at [establishment] or termination of Employer's participation in ATIP.

8. Effective date of audit protection. Provided I sign this Employee Participation Agreement within 30 days after I became employed with Employer at Establishment, I will be protected from an IRS audit of my tip income received at Establishment beginning on the date I became employed. If I sign this Employee Participation Agreement more than 30 days after I became employed with Employer at Establishment, I will be protected from an IRS audit of my tip income received at Establishment after the date of this agreement unless I revoke my participation or my employer revokes its participation.
9. Revocation by participating employee. I understand that I may revoke this Employee Participation Agreement in two ways. If I decide to report actual tips for any payroll period to Employer in an amount that is less than the amount that will be attributed, the Employer will no longer attribute tips to me. I may also revoke this Employee Participation Agreement by providing Employer with a signed written notice stating my intent to revoke participation. If my participation in ATIP is revoked for any reason I may not participate in ATIP for the remainder of the calendar year and I must report tips to Employer as required by the Internal Revenue Code. If my participation in ATIP is revoked for any reason I will retain audit protection for tip income for those payroll periods prior to the effective date of the revocation.
10. Revocation by employer. I understand that the Employer may decide to cease participation in ATIP and if so will provide written notification that it is no longer participating in ATIP. If Employer ceases participation in ATIP for any reason, I may not participate in ATIP for the remainder of the calendar year and I must report tips to Employer as required by the Internal Revenue Code. If my employer ceases participation in ATIP for any reason, I will retain audit protection for tip income for those payroll periods prior to the effective date of the revocation.
11. General compliance. I agree to file my federal income 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 Employer gives me as well as any other income I receive from any other source. Failure to file timely and report my tip income as described in the preceding sentence will result in loss of the audit protection described in paragraph 7.

By signing below, I agree to fulfill my responsibilities under this agreement and to participate in ATIP in accordance with the terms of this Agreement.

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

Revenue Procedure 2006-30 may be viewed or printed at
<http://www.irs.gov/businesses/small/article/0,,id=98944,00.html>

Revocation Notice

By signing below, I revoke my participation in ATIP.

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