

**TITLE 26 - INTERNAL REVENUE CODE****Subtitle F - Procedure and Administration****CHAPTER 61 - INFORMATION AND RETURNS****Subchapter A - Returns and Records****PART III - INFORMATION RETURNS****Subpart C - Information Regarding Wages Paid Employees****§ 6053. Reporting of tips****(a) Reports by employees**

Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121 (a) or section 3401 (a)) or which are compensation (as defined in section 3231 (e)) shall report all such tips in one or more written statements furnished to his employer on or before the 10th day following such month. Such statements shall be furnished by the employee under such regulations, at such other times before such 10th day, and in such form and manner, as may be prescribed by the Secretary.

**(b) Statements furnished by employers**

If the tax imposed by section 3101 or section 3201 (as the case may be) with respect to tips reported by an employee pursuant to subsection (a) exceeds the tax which can be collected by the employer pursuant to section 3102 or section 3202 (as the case may be), the employer shall furnish to the employee a written statement showing the amount of such excess. The statement required to be furnished pursuant to this subsection shall be furnished at such time, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. When required by such regulations, a duplicate of any such statement shall be filed with the Secretary.

**(c) Reporting requirements relating to certain large food or beverage establishments****(1) Report to Secretary**

In the case of a large food or beverage establishment, each employer shall report to the Secretary, at such time and manner as the Secretary may prescribe by regulation, the following information with respect to each calendar year:

- (A)** The gross receipts of such establishment from the provision of food and beverages (other than nonallocable receipts).
- (B)** The aggregate amount of charge receipts (other than nonallocable receipts).
- (C)** The aggregate amount of charged tips shown on such charge receipts.
- (D)** The sum of—
  - (i)** the aggregate amount reported by employees to the employer under subsection (a), plus
  - (ii)** the amount the employer is required to report under section 6051 with respect to service charges of less than 10 percent.
- (E)** With respect to each employee, the amount allocated to such employee under paragraph (3).

**(2) Furnishing of statement to employees**

Each employer described in paragraph (1) shall furnish, in such manner as the Secretary may prescribe by regulations, to each employee of the large food or beverage establishment a written statement for each calendar year showing the following information:

- (A)** The name and address of such employer.
- (B)** The name of the employee.
- (C)** The amount allocated to the employee under paragraph (3) for all payroll periods ending within the calendar year.

Any statement under this paragraph shall be furnished to the employee during January of the calendar year following the calendar year for which such statement is made.

**(3) Employee allocation of 8 percent of gross receipts**

**(A) In general**

For purposes of paragraphs (1)(E) and (2)(C), the employer of a large food or beverage establishment shall allocate (as tips for purposes of the requirements of this subsection) among employees performing services during any payroll period who customarily receive tip income an amount equal to the excess of—

- (i) 8 percent of the gross receipts (other than nonallocable receipts) of such establishment for the payroll period, over
- (ii) the aggregate amount reported by such employees to the employer under subsection (a) for such period.

**(B) Method of allocation**

The employer shall allocate the amount under subparagraph (A)—

- (i) on the basis of a good faith agreement by the employer and the employees, or
- (ii) in the absence of an agreement under clause (i), in the manner determined under regulations prescribed by the Secretary.

**(C) The Secretary may lower the percentage required to be allocated**

Upon the petition of the employer or the majority of employees of such employer, the Secretary may reduce (but not below 2 percent) the percentage of gross receipts required to be allocated under subparagraph (A) where he determines that the percentage of gross receipts constituting tips is less than 8 percent.

**(4) Large food or beverage establishment**

For purposes of this subsection, the term “large food or beverage establishment” means any trade or business (or portion thereof)—

- (A) which provides food or beverages,
- (B) with respect to which the tipping of employees serving food or beverages by customers is customary, and
- (C) which normally employed more than 10 employees on a typical business day during the preceding calendar year.

For purposes of subparagraph (C), rules similar to the rules of subsections (a) and (b) of section 52 shall apply under regulations prescribed by the Secretary, and an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee.

**(5) Employer not to be liable for wrong allocations**

The employer shall not be liable to any person if any amount is improperly allocated under paragraph (3)(B) if such allocation is done in accordance with the regulations prescribed under paragraph (3)(B).

**(6) Nonallocable receipts defined**

For purposes of this subsection, the term “nonallocable receipts” means receipts which are allocable to—

- (A) carryout sales, or
- (B) services with respect to which a service charge of 10 percent or more is added.

**(7) Application to new businesses**

The Secretary shall prescribe regulations for the application of this subsection to new businesses.

(Added Pub. L. 89–97, title III, § 313(e)(2)(A), July 30, 1965, 79 Stat. 384; amended Pub. L. 89–212, § 2(d), Sept. 29, 1965, 79 Stat. 859; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, § 314(a), Sept. 3, 1982, 96 Stat. 603; Pub. L. 98–369, div. A, title X, § 1072(a), (c)(1), July 18, 1984, 98 Stat. 1052.)

## Amendments

1984—Subsec. (c)(3)(C). Pub. L. 98–369, § 1072(a), substituted “Upon the petition of the employer or the majority of employees of such employer, the Secretary” for “The Secretary” and “2 percent” for “5 percent”.

Subsec. (c)(4). Pub. L. 98–369, § 1072(c)(1), inserted provision that an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee.

1982—Subsec. (c). Pub. L. 97–248 added subsec. (c).

1976—Pub. L. 94–455 struck out “or his delegate” after “Secretary” wherever appearing.

1965—Subsec. (a). Pub. L. 89–212, § 2(d)(1), inserted “or which are compensation (as defined in section 3231 (e))”.

Subsec. (b). Pub. L. 89–212, § 2(d)(2), inserted “or section 3201 (as the case may be)” and “or section 3202 (as the case may be)”.

## Effective Date of 1984 Amendment

Section 1072(c)(2) of Pub. L. 98–369 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to calendar years beginning after December 31, 1982.”

## Effective Date of 1982 Amendment

Section 314(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) In general.—The amendments made by this section [amending this section and sections 6001 and 6678 of this title, and enacting provisions set out as a note under this section] shall apply to calendar years beginning after December 31, 1982.

“(2) Special rule for 1983.—For purposes of section 6053(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of payroll periods ending before April 1, 1983, an employer must only report with respect to such periods—

“(A) amounts described in subparagraphs (A), (B), (C), and (D) of section 6053(c)(1) of such Code, and

“(B) the name, and identification number, wages paid to, and tips reported by, each tipped employee.”

## Effective Date of 1965 Amendment

Amendment by Pub. L. 89–212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

## Effective Date

Section 313(f) of Pub. L. 89–97 provided that: “The amendments made by this section [enacting this section and amending sections 451, 3102, 3121, 3401, 3402, 6051, 6652, and 6674 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply only with respect to tips received by employees after 1965.”

## Regulations

Section 1072(b) of Pub. L. 98–369 provided that: “The Secretary of the Treasury shall prescribe by regulations within 1 year after the date of the enactment of this Act [July 18, 1984] the applicable recordkeeping requirements for tipped employees.”

## Threat of Audit Prohibited To Coerce Tip Reporting Alternative Commitment Agreements

Pub. L. 105–206, title III, § 3414, July 22, 1998, 112 Stat. 755, provided that: “The Secretary of the Treasury or the Secretary’s delegate shall instruct employees of the Internal Revenue Service that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer into entering into a Tip Reporting Alternative Commitment Agreement.”

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

### **Modification of Tips Allocation Method**

Pub. L. 99-514, title XV, § 1571, Oct. 22, 1986, 100 Stat. 2765, provided that: “Effective for any payroll period beginning after December 31, 1986, an establishment may utilize the optional method of tips allocation described in the last sentence of section 31.6053-3(f)(1)(iv) of the Internal Revenue Regulations only if such establishment employs less than the equivalent of 25 full-time employees during such payroll period.”

### **Study of Tip Compliance**

Section 314(c) of Pub. L. 97-248 directed Secretary of the Treasury or his delegate to submit before Jan. 1, 1987, to Committee on Ways and Means of House of Representatives and to Committee on Finance of Senate a report with respect to tip compliance in food and beverage service industry. Such study to include, but not be limited to, an analysis of tipping patterns, tip-sharing arrangements, and tip compliance patterns.