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(1) The amount of the employee tax imposed by section 3101 in respect of tips reported by an employee to his employer pursuant to section 6053(a) (see §31.6053–1) exceeds

(2) The amount of employee tax imposed by section 3101 in respect of such tips which can be collected by the employer from wages (exclusive of tips) of such employee or from funds furnished to the employer by the employee,

the employer shall furnish to the employee a statement showing the amount of the excess. For provisions relating to the collection of, and liability for, employee tax on tips, see §31.3102–3.

(b) *Form of statement.* Form W–2 is the form prescribed for use in furnishing the statement required by paragraph (a) of this section, except that if an employer files a composite return pursuant to §31.6011(a)–8 he may furnish to the employee, in lieu of Form W–2, a statement containing the required information in a form suitable for retention by the employee. A statement is required under this section in respect of an excess referred to in paragraph (a) of this section, even though the employer may not be required to furnish a statement to the employee under §31.6051. Provisions applicable to the furnishing of a statement under §31.6051 shall be applicable to statements under this section.

(c) *Excess to be shown on statement.* If there is an excess in respect of the tips reported by an employee in two or more statements furnished pursuant to section 6053(a), only the total excess for the period covered by the employer statement shall be shown on such statement.

[T.D. 7001, 34 FR 1005, Jan. 23, 1969, as amended by T.D. 7351, 40 FR 17145, Apr. 17, 1975]

§31.6053–3 Reporting by certain large food or beverage establishments with respect to tips.

(a) *Information return by an employer with respect to tips*—(1) *In general.* An employer shall file a separate information return for each calendar year (as defined in paragraph (j)(14) of this section) with respect to each large food or beverage establishment (as defined in paragraph (j)(7) of this section) in which such employer has employees. The information return shall contain the following:

(i) The employer's name, address, and employer identification number;

(ii) The establishment's name, address, and identification number (see paragraph (a)(5) of this section);

(iii) The aggregate gross receipts (other than nonallocable receipts) of the establishment from the provision of food or beverages;

(iv) The aggregate amount of charge receipts (other than nonallocable receipts) on which there were charged tips;

(v) The aggregate amount of charged tips shown on such charge receipts;

(vi) The aggregate amount of tips actually received by food or beverage employees of the establishment during the calendar year and reported to the employer under section 6053(a) (see paragraph (j)(15) of this section);

(vii) The aggregate amount the employer is required to report under section 6051 and the regulations thereunder with respect to service charges of less than 10 percent.

(viii) The name and social security number of each employee of the establishment during the calendar year to whom an allocation was made under section 6053(c)(3) and paragraph (d) of this section and the amount of such allocation.

(2) *Calendar year 1983 information return.* In the case of the 1983 calendar year information return, the information required by paragraphs (a)(1)(iii) through (viii) of this section shall be reported for the period beginning with the first payroll period ending on or after April 1, 1983, and ending with the end of the 1983 calendar year. See paragraph (c) of this section relating to information required for the first quarter of 1983.

(3) *Prescribed form.* The return required by this paragraph shall be made on Form 8027 with the transmittal form being Form 8027T. The information required by paragraph (a)(1)(viii) of this section may be provided by attaching to Form 8027 photocopies of each employee's W–2 for whom an allocation was made. A copy of any written good faith agreements applicable to a given calendar year (see paragraph (e)

of this section) shall be attached to Form 8027 for such calendar year.

(4) *Time and place for filing.* The information return required by this paragraph shall be filed on or before the last day of February of the year following the calendar year for which the return is made with the Internal Revenue Service Center specified by the Form 8027 or its instructions. See section 6652(a) relating to the penalty for failure to file this information return.

(5) *Large food or beverage establishment identification number.* Each large food or beverage establishment shall have a unique identification number to be included on Form 8027 and any employer's application pursuant to paragraph (h) of this section. If an identification number is changed for any reason, for example if the establishment becomes a different ''type'' of establishment as described in paragraph (a)(5)(ii) of this section, or if the employer identification number changes, the employer shall notify the Service by including both the old and new identification numbers on the Form 8027 filed for the year in which the identification number was changed. An establishment identification number shall be determined as follows:

(i) The first nine digits shall be the employer's identification number (EIN).

(ii) The next digit shall identify the type of large food or beverage establishment, with the categories as follows:

(A) The number ''1'' signifies an establishment that serves evening meals only (with or without alcoholic beverages).

(B) The number ''2'' signifies an establishment that serves evening meals and other meals (with or without alcoholic beverages).

(C) The number ''3'' signifies an establishment that serves only meals other than evening meals (with or without alcoholic beverages).

(D) The number ''4'' signifies an establishment that serves food, if at all, as only an incidental part of the business of serving alcoholic beverages.

(iii) The last five digits are to differentiate between multiple establishments reporting under the same EIN number. For this purpose, the employer shall assign each establishment reporting under such employer's EIN number a unique five digit number. For example, each establishment could be assigned a unique number by beginning with ''00001'' and progressing in numerical sequence (*i.e.*, ''00002'', ''00003'', ''00004'', ''00005'') until each establishment has been assigned a number.

(6) *Definitions.* See paragraph (j) of this section for definitions of various terms used in this section.

(b) *Employer statement to employees*—(1) *In general.* The employer shall furnish to each employee to whom an amount is allocated under section 6053(c)(3) and paragraph (d) of this section a written statement for each calendar year containing the following information:

(i) The employer's name and address;

(ii) The name of the employee;

(iii) The aggregate amount allocated to the employee for the calendar year.

(2) *Prescribed form.* The written statement required by this paragraph shall be made on Form W–2.

(3) *Time and manner for furnishing the statement.* The written statement required by this paragraph shall be due at the same time and shall be furnished in the same manner as the statement required to be furnished under section 6051. See section 6678 relating to the penalty for failure to file this statement.

(4) *Employee's request for an early W–2.* If an employee's employment is terminated prior to the end of a calendar year and the employee requests an early W–2 under section 6051 and § 31.6051–1(d), a tip allocation under section 6053(c) is not required to be shown on such early W–2. However, the employer may include on such early W–2 the employee's actual tip allocation under section 6053(c), if known, or a good faith estimate of such allocation. A good faith estimate of an allocation shall be signified by placing the word ''estimate'' next to the allocation on the employee's copy of the early W–2. An amended W–2 must be furnished to each employee to whom an amount is allocated under section 6053(c), during January of the calendar year following

the calendar year for which the statement is made, if there is no tip allocation on the early W–2 or if the estimated allocation is found to vary from the actual allocation by more than 5 percent of the amount of the actual allocation.

(5) *Employee reporting of tip income.* Regardless of whether an employee receives an allocation under section 6053(c) and §31.6053–3, the employee is required to report as income on his or her Federal income tax return all tips received. For tips received before October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in section 6001 and the regulations thereunder, For tips received on or after October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in §31.6053–4. The Internal Revenue Service may determine that a tipped employee received a larger amount of tip income than is reflected by the employee's allocation.

(c) *First quarter report of 1983*—(1) *In general.* For the period beginning with the first day of calendar year 1983, and ending on the last day of the last payroll period ending before April 1, 1983, an employer must file an information return for each large food or beverage establishment that was a large food or beverage establishment on January 1, 1983, that contains the information required by paragraph (a)(1)(i)–(vii) of this section for such period.

(2) *Prescribed form.* The information return required by this paragraph shall be made on Form 8027. The returns for the first calendar quarter of 1983 and for calendar year 1983 may be incorporated onto a single Form 8027 but must separately set forth the required information for each of the two return periods.

(3) *Time and place for filing.* The time and place for filing the information return required by this paragraph shall be the same as for the calendar year 1983 information return. See paragraph (a)(4) of this section.

(d) *Allocation of excess of 8 percent of gross receipts over the aggregate amount of reported tips*—(1) *In general.* An employer that operates a large food or beverage establishment shall allocate (as tips for purposes of the requirements of section 6053(c) among tipped employees at such establishment performing services during any payroll period an amount equal to the excess of:

(i) Eight percent of the gross receipts (other than nonallocable receipts) of such establishment for the payroll period, over

(ii) The aggregate amount of tips reported by employees at such establishment to the employer under section 6053(a) for such period. For this purpose, if an employee reports under section 6053(a) on the basis of a period other than a payroll period such employee may specify what portion of his or her reported tips are attributable to a given payroll period when reporting tips to the employer under section 6053(a). In the absence of any specification by the employee, the employer shall allocate the amount of tips reported by an employee to a given payroll period either:

(A) By multiplying the aggregate amount of those reported tips by a fraction, the numerator of which is the gross receipts attributable to the tipped employee for the payroll period and the denominator of which is the gross receipts attributable to the employee for the entire tip reporting period; or

(B) By multiplying the aggregate amount of those reported tips by a fraction, the numerator of which is the hours worked by the employee during the payroll period and the denominator of which is the total hours worked by the employee during the entire tip reporting period.

With respect to each establishment, the employer shall choose the method described in either paragraph (d)(1)(ii)(A) or paragraph (d)(1)(ii)(B) of this section for a calendar year and apply such method consistently in making all allocations required by the preceding sentence. If an employee is employed in more than one of an employer's food or beverage operations, such employee may specify what portion of his or her reported tips are attributable to a given operation when reporting tips to the employer under section 6053(a). In the absence of any specification by the employee, the employer shall allocate the amount of tips reported by the employee to a given

food or beverage operation in a manner similar to that provided above for allocation of tips among payroll periods. The employer shall choose the method described in either paragraph (d)(1)(ii)(A) or paragraph (d)(1)(ii)(B) of this section for a calendar year and apply such method consistently in making all allocations required by the preceding sentence.

(2) *Employer not liable to employees for allocations.* An employer who makes allocations (as tips for purposes of the requirements of section 6053(c) and this section) among such employer's employees in accordance with paragraph (d) and either paragraph (e) or (f) of this section shall not be liable to any employee if any amount is improperly allocated. However, if an employee's total tip allocations for a calendar year as reported on Form W–2 varies from the correct allocation amount by more than 5 percent of the correct allocation amount, the employer shall adjust such employee's allocation. If such an adjustment of an employee's allocation is required, the employer shall also review all tips allocations made to other employees in the same establishment to assure that the error did not distort other allocated amounts by more than 5 percent. Any adjustments made for variances of more than 5 percent shall be reflected in amended W–2's issued to the affected employees. Tip allocations made under this section shall have no effect on the withholding responsibilities of the employer under subtitle C of the Code. Withholding on tips is authorized only with respect to amounts of tips reported to employers by employees under section 6053(a).

(e) *Allocation pursuant to a good faith agreement.* The amount determined under paragraph (d)(2) of this section for each payroll period must be allocated among tipped employees providing services during such payroll period either on the basis of a good faith agreement described in this paragraph, or, if there is no good faith agreement applicable with respect to the payroll period on the basis of the allocation method provided in paragraph (f) of this section. A good faith agreement is a written agreement consented to by the employer and at least two-thirds of the members of each occupational category of tipped employees (*e.g.,* waiters, busboys, maitre d's) employed in the large food or beverage establishment at the time the agreement is adopted which:

(1) Provides for the allocation of the amount described in paragraph (d)(1) among tipped employees in a manner that, in combination with the tips reported by such employees under section 6053(a), will reflect a good faith approximation of the actual distribution of tip income among such tipped employees;

(2) Is effective prospectively beginning with the first day of a payroll period that begins after the date of adoption, but in no event later than the first day of the succeeding calendar year. However, a good faith agreement may be effective for calendar year 1983 if adopted on or before December 31, 1983.

(3) Is adopted at a time when there are tipped employees employed by the employer in each occupational category of tipped employees (*e.g.,* waiters, busboys, maitre d's) which would be affected by the agreement; and

(4) May be revoked prospectively by a written instrumnent adopted by a least two-thirds of the tipped employees who are employed in the establishment in occupational categories affected by the agreement at the time of the revocation. A revocation of an agreement shall be effective only at the beginning of a payroll period.

(f) *Allocation method to be used in the absence of a good faith agreement.* (1) In a case in which there is no good faith agreement in effect and the aggregate amount of tips reported pursuant to section 6053(a) with respect to a payroll period is less than 8 percent of the establishment's gross receipts for the payroll period, the employer shall allocate the difference as tips for purposes of section 6053(c) as provided in this paragraph. No allocations shall be made to indirectly tipped employees. An allocation shall be made to each directly tipped employee performing services for the establishment who has a reporting shortfall (as determined under paragraph (f)(1)(v) of this section) for the payroll period. The amount of each allocation shall be determined in the following manner:

(i) Multiply the amount of the establishment's gross receipts for the payroll period by 8 percent (0.08).

(ii) Determine the aggregate amount of tips reported for the payroll period by indirectly tipped employees.

(iii) Subtract from the amount determined under paragraph (f)(1)(i) the aggregate amount of tips reported by indirectly tipped employees as determined under paragraph (f)(1)(ii) of this section. The excess is the directly tipped employees' aggregate share of 8 percent of the gross receipts of the establishment for the payroll period.

(iv) For each directly tipped employee, multiply the amount determined under paragraph (f)(1)(iii) of this section by a fraction, the numerator of which is the amount of gross receipts of the establishment for the payroll period that is attributable to the employee and the denominator of which is the aggregate amount of gross receipts for the payroll period that is attributable to all directly tipped employees. The product is each directly tipped employee's share of 8 percent of the gross receipts of the establishment for the payroll period. The employer may determine the fraction described in the first sentence of this subparagraph by substituting for the numerator the number of hours worked by the directly tipped employee during the payroll period and by substituting for the denominator the number of hours worked by all directly tipped employees during the payroll period. For payroll periods beginning after December 31, 1986, the method of allocation described in the preceding sentence may be used only by an employer that employs less than the equivalent of 25 full-time employees (as defined in paragraph (j)(19) of this section) at the establishment during the payroll period.

(v) For each directly tipped employee, determine the excess, if any, of the amount determined under paragraph (f)(1)(iv) of this section over the amount reported as tips by the employee for the payroll period pursuant to section 6053(a). Such excess, if any, is the employee's shortfall for the payroll period.

(vi) Subtract from the amount determined under paragraph (f)(1)(i) of this section the aggregate amount of tips reported pursuant to section 6053(a) by all directly and indirectly tipped employees for the payroll period. The excess is the amount to be allocated as tips among directly tipped employees who had a shortfall for the payroll period as determined under paragraph (f)(1)(v) of this section.

(vii) For each directly tipped employee who had a shortfall for the payroll period, multiply the amount determined under paragraph (f)(1)(vi) of this section by a fraction, the numerator of which is the amount of such employee's shortfall (determined under paragraph (f)(1)(v) of this section and the denominator of which is the aggregate of all shortfalls for the payroll period for all directly tipped employees. The product is the employee's allocation for the payroll period.

(2) The provisions of this paragraph may be illustrated by the following examples:

Example 1. X is a large food or beverage establishment that has chosen to make tip allocations using its actual payroll period and gross receipts attributable to employees. X had gross receipts for a payroll period of $100,000 and tips reported for the payroll period of $6,200. Directly tipped employees reported $5,700 while indirectly tipped employees reported $500.

Directly tipped employees	Gross receipts for payroll period	Tips reported
A	18,000	1,080
B	16,000	880
C	23,000	1,810
D	17,000	800
E	12,000	450
F	14,000	680
Total	100,000	5,700

The allocation computations would be as follows:

(1) $100,000 (gross receipts)×0.08=$8,000.

(2) Tips reported by indirectly tipped employees=$500.

(3) $8,000−$500 (indirect employees tips)=$7,500.

(4)

Directly tipped employees	Directly tipped share of 8 pct gross	×	Gross receipts ratio	=	Employee share of 8 pct gross
A	$7,500		18,000/100,000		1,350
B	7,500		16,000/100,000		1,200
C	7,500		23,000/100,000		1,725

Directly tipped employees	Directly tipped share of 8 pct gross	×	Gross receipts ratio	=	Employee share of 8 pct gross
D	7,500		17,000/100,000		1,275
E	7,500		12,000/100,000		900
F	7,500		14,000/100,000		1,050
Total					7,500

(5)

Directly tipped employees	Employee share of 8 pct gross	–	Tips reported	=	Employee shortfall
A	$1,350		$1,080		$270
B	1,200		880		320
C	1,725		1,810		
D	1,275		800		475
E	900		450		450
F	1,050		680		370
Total shortfall					1,885

Since employee C has no reporting shortfall there is no allocation to C.

(6) $8,000 − 6,200 (total tips reported)=$1,800 (amount allocable among shortfall employees).

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
A	$1,800		270/1885		$258
B	1,800		320/1885		306
D	1,800		475/1885		454
E	1,800		450/1885		430
F	1,800		370/1885		353

Example 2. Assume the same facts as in example 1 except that the employer uses employee hours worked to calculate tip allocations.

Directly tipped employees	Hours worked in payroll period	Tips reported
A	40	$1,080
B	35	880
C	45	1,810
D	40	800
E	15	450
F	25	680
Total	200	$5,700

The allocation computations would be as follows:

(1) $100,000 (gross receipts)×0.08=$8,000

(2) Tips reported by indirectly tipped employees=$500

(3) $8,000 − $500 (indirect employees tips)=$7,500

(4)

Directly tipped employees	Directly tipped share of 8 pct gross	×	Hours worked ratio	=	Employee share of 8 pct gross
A	$7,500		40/200		$1,500
B	7,500		35/200		1,313
C	7,500		45/200		1,688
D	7,500		40/200		1,500
E	7,500		15/200		563
F	7,500		25/200		938

(5)

Directly tipped employees	Employee share of 8 pct gross	–	Tips reported	=	Employee shortfall
A	$1,500		$1,080		$420
B	1,313		880		433
C	1,688		1,810		
D	1,500		800		700
E	563		450		113
F	938		680		258
Total shortfall					$1,924

Since employee C has no reporting shortfall there is no allocation to C.

(6) $8,000 − 6,200 (total tips reported)=$1,800 (amount allocable among shortfall employees).

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
A	$1,800		420/1,924		$393
B	1,800		433/1,924		405
D	1,800		700/1,924		655
E	1,800		113/1,924		106
F	1,800		258/1,924		241

Example 3. X is a large food or beverage establishment that has chosen to make tip allocations using a calendar year period. X had gross receipts for a calendar year of $2,000,000 and tips reported for the calendar year of $176,000. The amount to be allocated as tips is equal to the excess of 8 percent of the gross receipts of the establishment for the calendar year over the aggregate amount of tips reported by the employees of the establishment to the employer under section 6053(a) for the calendar year. Because the reported tips for the year ($176,000) are in excess of 8 percent of the gross receipts ($2,000,000× .08=$160,000), no tip allocations are made to the employees of this establishment for the calendar year.

Example 4. X is a large food or beverage establishment that has chosen to make tip allocations using a calendar year period and gross receipts attributable to employees. X had gross receipts for a calendar year of $1,500,000 and tips reported for the calendar year of $110,000. Directly tipped employees

reported $94,000 while indirectly tipped employees reported $16,000.

Directly tipped employees	Gross receipts for calendar year	Tips reported
A	260,000	$18,600
B	240,000	14,600
C	380,000	31,200
D	260,000	13,000
E	160,000	6,000
F	200,000	10,600
Total	$1,500,000	$94,000

The allocation computations are as follows:

(1) $1,500,000 (gross receipts) ×0.08=$120,000.

(2) Tips reported by indirectly tipped employees=$16,000.

(3) $120,000−16,000 (indirect employees tips)=$104,000.

(4)

Directly tipped employees	Directly tipped share of 8 pct. gross	X	Gross receipts ratio	=	Employee share of 8 pct. gross
A	$104,000		260,000/1,500,000		$18,027
B	104,000		240,000/1,500,000		16,640
C	104,000		380,000/1,500,000		26,347
D	104,000		260,000/1,500,000		18,027
E	104,000		160,000/1,500,000		11,093
F	104,000		200,000/1,500,000		13,867

(5)

Directly tipped employees	Employee share of 8 pct. gross	–	Tips reported	=	Employee shortfall
A	18,027		18,600		
B	16,640		14,600		2,040
C	26,347		31,200		
D	18,027		13,000		5,027
E	11,093		6,000		5,093
F	13,867		10,600		3,267
Total shortfall					15,427

Since employees A and C do not have a reporting shortfall there are no allocations to them.

(6) $120,000−110,000 (total tips reported)=$10,000 (amount allocable among shortfall employees).

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
B	10,000		2,040/15,427		$1,322
D	10,000		5,027/15,427		3,259
E	10,000		5,093/15,427		3,301
F	10,000		3,267/15,427		2,118
Total					$10,000

Example 5. Assume the same facts as in example 4 except that the employer has chosen the employee hours worked method of computing tip allocations, the calendar year gross receipts were $1,000,000, and the tips reported for the calendar year were $74,000. Directly tipped employees reported $70,000 while indirectly tipped employees reported $4,000.

Directly tipped employees	Hours worked in the calendar year	Tips reported
A	2,000	$11,800
B	1,750	9,800
C	2,250	15,100
D	2,000	9,000
E	750	4,500
F	1,250	7,800
G	490	3,200
H	510	2,800
I	200	800
J	1,000	5,200
Total	12,200	$70,000

The allocation computations would be as follows:

(1) $1,000,000 (gross receipts)×0.08=$80,000.

(2) Tips reported by indirectly tipped employees=$4,000.

(3) $80,000−$4,000 (indirect employee tips)=$76,000.

(4)

Directly tipped employees	Directly tipped share of 8 pct. gross	×	Hours worked ratio	=	Employee share of 8 pct. gross
A	$76,000		2,000/12,200		$12,459
B	76,000		1,750/12,200		10,902
C	76,000		2,250/12,200		14,016
D	76,000		2,000/12,200		12,459
E	76,000		750/12,200		4,672
F	76,000		1,250/12,200		7,787
G	76,000		490/12,200		3,052
H	76,000		510/12,200		3,177
I	76,000		200/12,200		1,246
J	76,000		1,000/12,200		6,230
Total					$76,000

(5)

Directly tipped employees	Employee share of 8 pct. gross	–	Tips reported	=	Employee shortfall
A	12,459		11,800		$659
B	10,902		9,800		1,102
C	14,016		15,100		
D	12,459		9,000		3,459
E	4,672		4,500		172
F	7,787		7,800		
G	3,052		3,200		
H	3,177		2,800		377
I	1,246		800		446
J	6,230		5,200		1,030

Directly tipped employees	Employee share of 8 pct. gross	–	Tips reported	=	Employee shortfall
Total shortfall	.....	....	.....	....	$7,245

Since employees C, F, and G have no reporting shortfalls, there are no allocations made to them.

(6) $80,000 − 74,000 (total tips reported) = $6,000.

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
A	$6,000		659/7,245		$546
B	6,000		1,102/7,245		913
D	6,000		3,459/7,245		2,865
E	6,000		172/7,245		142
H	6,000		377/7,245		312
I	6,000		446/7,245		369
J	6,000		1,030/7,245		853
Total	.....	....	.....	....	$6,000

(g) *Period of allocation.* In applying paragraphs (d), (e), (f), and (h)(3) of this section an employer may substitute the calendar year or any period that results from a reasonable division of a calendar year for the term ''payroll period'' each place it appears in such paragraphs. If an employer makes such a substitution with respect to a large food or beverage establishment the substituted period shall be stated on Form 8027 for such large food or beverage establishment and shall be effective for such employer's large food or beverage establishment for the entire calendar year.

(h) *Lowering the percentage to be used*—(1) *In general.* On and after July 18, 1984, an employer or a majority of the employees (as defined in paragraph (h)(2)(iii) of this section) of an employer may petition the district director for the internal revenue district in which the employer's establishment is located to have the percentage of gross receipts that is used to determine the amount to be allocated under section 6053(c)(3)(A) and paragraph (d) of § 31.6053–3 reduced from 8 percent to the percentage that the petitioning employer or employees believe to be the actual percentage of the amount of the establishment's gross receipts that reflects the amount of tips. The district director may thereafter reduce the percentage of gross receipts used to determine the amount to be so allocated to the percentage that the district director determines to be the proper estimate of the actual percentage of gross receipts constituting tips. The district director, however, may not reduce the percentage below 2 percent. For the rules in effect prior to July 18, 1984, see 26 CFR 31.6053–3(h) (Rev. as of April 1, 1984).

(2) *Time and manner for petition to have percentage reduced*—(i) *In general.* The petition shall be in writing and shall include sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment. For example, such information might include the charged tip rate, the type of establishment, menu prices, the location of the establishment, the amount of ''self-service'' required, the days and hours open for business, and whether the customer receives the check from or pays the server for the meal.

(ii) *Employer petitions.* In the case of employer-originated petitions, the employer has the burden of supplying sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment. The employer also shall attach to the petition copies of Form 8027 (if any) filed for the establishment for the 3 years preceding calendar years.

(iii) *Employee petitions.* (A) In the case of employee-originated petitions, a majority of the employees of an establishment must consent to the petition. A majority for purposes of this paragraph is more than one-half of all the directly tipped employees (within the meaning of paragraph (j)(12) of this section) employed by the establishment at the time the petition is filed. In the case of a single petition for certain multi-establishment employers (see paragraph (h)(4) of this section), more than one-half of the aggregate directly tipped employees (at the time the petition is filed) of the establishments covered by the petition must consent. The petition filed with the district director must state the total number of directly

tipped employees employed by the establishment (or establishments) and the number of the directly tipped employees consenting to the petition.

(B) The petitioning employees have the burden of supplying sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment to the extent they possess such information. If the employer possesses relevant information, the employer must provide such information to the district director upon the request of the petitioning employees or district director. Employees who file a petition under this paragraph must promptly notify their employer of the petition. Promptly upon receipt of such notification, their employer must submit to the district director copies of the Form 8027 (if any) filed for the establishment for the 3 immediately preceding calendar years. Any information supplied by the employer during the petitioning process constitutes return information (as defined in section 6103(b)(2)) which shall not be disclosed by the Internal Revenue Service (except as provided in section 6103) to any employees of the employer or to representatives of such employees.

(3) *Effective date for reduced percentage.* The district director shall determine the term for which the reduced percentage is to be effective. At the end of such term, the reduced percentage shall cease to apply unless previously extended by the district director for the district in which the large food or beverage establishment is located. In no event shall the reduced percentage be applied to payroll periods before the date the petition described in paragraph (h)(2) of this section is filed unless the establishment is a new business (as described in paragraph (i) of §31.6053–3). In the case of a new business or a petition for reduction filed prior to September 30, 1983, the district director may allow the approved reduced percentage to be applied retroactively to the first day of the calendar year of the petition. Until such time as the employer is notified in writing by the district director of approval of a reduction, the employer must continue to use 8 percent of gross receipts for purposes of complying with section 6053(c) and this section.

(4) *Single petition for certain multi-establishment employers.* An employer (including a single employer as defined in section 52 (a) or (b)) or a majority of the employees of such employer may use a single petition for two or more of the employer's establishments if such establishments are essentially the same type of business, the petitioning employer or employees have made a good faith determination that the tip rates at such establishments are essentially the same, and the establishments are located in the same internal revenue region. Single petitions shall include the names and locations of the establishments for which a reduction is requested and the information required by paragraph (h)(2) of this section for a typical establishment. A single petition for multi-establishments located within an internal revenue region shall be filed with the district director for the internal revenue district in which the greatest number of the establishments included in the petition are located. If there is an equal number of establishments located in two or more internal revenue districts the employer or employees petitioning may choose the district to which the petition is sent.

(i) *Application of reporting requirements to new businesses*—(1) *In general.* A food or beverage operation is a new business if the employer of the operation did not operate any food or beverage operations during the preceding calendar year. An employer will not be considered to have operated a food or beverage operation during a calendar year if each food or beverage operation of the employer was operated for less than one calendar month during such year. In a calendar year in which a food or beverage operation is a new business, the determination of whether the operation is a large food or beverage establishment shall be made as provided in paragraph (i)(2) of this section and the employer shall comply with section 6053(c) and this section as provided in paragraph (i)(3) of this section.

(2) *Determination of status as a large food or beverage establishment.* A food or beverage operation shall be considered a large food or beverage establishment

during the calendar year in which it is a new business if the average number of hours worked per business day by all employees of the employer at the new business during each of any two consecutive calendar months of the calendar year, computed in the manner provided in the second sentence of paragraph (j)(9) of this section, is greater than 80 hours.

(3) *New business compliance under section 6053(c).* A new business that is determined to be a large food or beverage establishment under paragraph (i)(2) of this section shall comply with section 6053(c) and this section beginning with the first payroll period that begins after the first period of two consecutive calendar months described in paragraph (i)(2) of this section.

(j) *Definitions.* For purposes of section 6053(c) and this section:

(1) *Gross receipts.* Gross receipts shall include all receipts (other than nonallocable receipts), from the provision of food or beverages by a large food or beverage establishment from cash sales, charge receipts (including charged tips only to the extent the cash sales amount has been reduced due to the employer paying cash to tipped employees for charged tips due them), charges to a hotel room (excluding tips charged to a hotel room only to the extent that the employer's accounting procedures allow such tips to be segregated out and excluding charges that are otherwise included in charge receipts), and the retail value of complimentary food or beverages (as defined in paragraph (j)(16) of this section) served to customers. Gross receipts shall not include state or local taxes. In the case of a trade or business that does not charge separately for the provision of food or beverages (*i.e.,* a trade or business that provides other goods or services along with food or beverages for a combined price, such as a ''package deal'' for food and lodging), the employer shall make a good faith estimate of the gross receipts attributable to the provision of the food or beverages that reflects the cost to the employer of providing the food or beverages plus a reasonable profit factor.

(2) *Gross receipts attributable to a directly tipped employee.* Gross receipts attributable to a directly tipped employee are those gross receipts (as defined in paragraph (j)(1) of this section) from the provision of food or beverages to customers with respect to which the employee provided services. For example, if a directly tipped employee's name is on every check given to customers for whom the employee has provided services, the gross receipts attributable to such employee could be determined by aggregating the amounts of all checks bearing that employee's name (other than amounts from nonallocable receipts).

(3) *Nonallocable receipts.* Nonallocable receipts are receipts which are attributable to carryout sales or to services with respect to which a service charge of 10 percent or more is added. Carryout sales are sales of food or beverages for consumption off the premises of the establishment. Room service is not a carryout sale. If an establishment's accounting system does not segregate receipts from carryout sales from the establishment's other receipts, receipts from carryout sales may be determined as an estimated percentage of total receipts. The applicable percentage shall be determined in good faith by the employer on the basis of generally accepted accounting practices, including but not limited to, surveys of carryout sales as a percentage of gross sales. An employer may rely upon estimates as to carryout sales which are established in good faith between the employer and state or local governments for purposes of state or local taxation.

(4) *Charge receipts.* Charge receipts shall include credit card charges and charges under any other credit arrangement (e.g., house charges, city ledger, and charge arrangements to country club members). Charges to a hotel room may be excluded from charge receipts if such exclusion is consistent with the employer's normal accounting practices and the employer applies such exclusion consistently for a given large food or beverage establishment. Otherwise, charges to a hotel room shall be included in charge receipts.

(5) *Charged tips.* A tip included on a charge receipt is a charged tip.

(6) *Food or beverage operation.* A ''food or beverage operation'' is any business

activity which provides food or beverages for consumption on the premises (other than ''fast food'' operations). If an employer conducts activities that provide food or beverages at more than one location, the activity at each separate location shall be considered to be a separate food or beverage operation, Each activity conducted within a single building shall be considered to be conducted at a separate location if the customers of the activity, while being provided with food or beverages, occupy an area separate from that occupied by customers of other activities and the gross receipts of the activity are recorded separately from the gross receipts of other activities. For example, a gourmet restaurant, a coffee shop, and a cocktail lounge in a hotel would each be treated as a separate food or beverage operation if gross receipts from each activity are recorded separately. In addition, an employer may treat different activities conducted in the identical place at different times as separate food or beverage operations if the gross receipts of the activities at each time are recorded separately. For example, a restaurant may record the gross receipts from its cafeteria style lunch operation separately from the gross receipts of its full service food or beverage operations.

(7) *Large food or beverage establishment.* A food or beverage operation is a ''large food or beverage establishment'' if:

(i) The employer at the food or beverage operation normally employed more than 10 employees on a typical business day during the preceding calendar year, and

(ii) The tipping of food or beverage employees of the food or beverage operation is customary. Generally, tipping would not be considered customary for a cafeteria style operation (as defined in paragraph (j)(18) of this section) or for a food or beverage operation where at least 95 percent of its total sales are nonallocable receipts, within the meaning of paragraph (j)(3) of this section, by reason of the addition of a service charge of 10 percent or more. Total sales shall include only gross receipts (as defined in paragraph (j)(1) of this section) and nonallocable receipts (other than carryout receipts) from the provision of food or beverages. In the case of an operation such as a restaurant that is a cafeteria style operation at lunch and that has full service with tipping customary at dinner, the entire operation is generally a large food or beverage establishment if the employer meets the 10-employee test. However, if the gross receipts of the cafeteria style operation at lunch are recorded separately from the dinner operation gross receipts the employer may treat the dinner operation as a large food or beverage establishment and the lunch operation as a separate food or beverage operation that is not a large food or beverage establishment due to the fact that tipping is not considered customary for cafeteria style operations.

(8) *Employee.* The term ''employee'' has the same meaning as in section 3401(c) and §31.3401(c)–1.

(9) *More than 10 employees on a typical business day.* An employer shall be considered to have normally employed more than 10 employees on a typical business day during a calendar year if one-half of the sum of the average number of employee hours worked per business day during the calendar month in which the aggregate gross receipts from food or beverage operations were the greatest plus the average number of employee hours worked per business day during the calendar month in which the aggregate gross receipts from food or beverage operations were the least, is greater than 80 hours. The average number of employee hours worked per business day during a month shall be computed by dividing the total number of hours worked during the month by all employees of the employer who are employed in a food or beverage operation by the average of the number of days during the month that each food or beverage operation at which such employees worked was open for business. If an employer operates both a food or beverage operation and a nonfood or beverage operation, and one or more of his or her employees work for both operations, the employer may make a good faith estimate of the number of hours such employees worked for each operation in a given month. Similarly, in cases where one or more of an employer's employees work for more

than one of such employer's food or beverage operations, a good faith estimate may be made of the number of hours such employees worked for each operation in a given month. For purposes of this subparagraph, employees who are employed in a food or beverage operation include all employees of the operation, not just food or beverage employees. The employees of an employer shall include all employees at all food or beverage operations who, along with the employees of such employer, would be treated as employees of a single employer under section 52 (a) or (b) (as in effect on September 3, 1982) and the regulations thereunder. For example, if an employer at a food or beverage operation is a member of a controlled group of corporations, then all employees of all corporations which are members of such controlled group of corporations shall be treated as employed by each such employer for purposes of this paragraph. However, an individual who owns 50 percent or more in value of the stock of a corporation operating an establishment shall not be treated as an employee of any establishment owned by the corporation.

(10) *Food or beverage employee.* A ''food or beverage employee'' is 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.

(11) *Tipped employee.* A ''tipped employee'' of a food or beverage operation is an employee who is a food or beverage employee that customarily receives tip income from employment at that operation. 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.

(12) *Directly tipped employee.* A ''directly tipped employee'' is 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.

(13) *Indirectly tipped employee.* An ''indirectly tipped employee'' is 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.

(14) *Calendar year.* The term ''calendar year'' shall mean either the period from January 1 through December 31 or the period that begins with the first day of the first payroll period ending on or after January 1 and ends with the last day of the last payroll period ending in December of the same year. With respect to any establishment, the employer shall choose one of these two descriptions and apply it consistently.

(15) *Tips reported for a specified period.* Tips reported to an employer for a specified period under section 6053(a) are those tips actually received by an employee during such period without regard to the time when the tips are reported to the employer. Thus, if an employee reports to the employer in calendar year 1984 tips the employee actually received in calendar year 1983, the amount of tips actually received in calendar year 1983 must be included by the employer when making such information returns, statements and allocations required under section 6053(c) and this section for calendar year 1983.

(16) *Complimentary food or beverages.* Food or beverages served to customers without charge are complimentary if:

(i) Tipping for the provision of such food or beverages is customary at the establishment, and

(ii) Such food or beverages are provided in connection with an activity that is engaged in for profit and whose receipts would not be included in gross receipts as defined in paragraph (j)(1) of this section but for this subparagraph and are not nonallocable receipts which are attributable to services with

respect to which a service charge of 10 percent or more is added.

For example, the retail values of complimentary hors d'oeuvres served at a bar or a complimentary dessert served to a regular patron of a restaurant would not be included in gross receipts because the receipts of the bar or restaurant would be included in gross receipts as defined in paragraph (j)(1) of this section. The retail value of a complimentary fruit basket placed in a hotel room generally would not be included in gross receipts because tipping for the provision of such items is not customary. The retail value of complimentary drinks served to customers in a gambling casino would be included in gross receipts because tipping for the provision of such items is customary, the gambling casino is an activity engaged in for profit, and the gambling receipts of the casino would not be included in gross receipts as defined in paragraph (j)(1) of this section except for this subparagraph.

(17) *Fast food operation.* An operation is a ''fast food'' operation only if its customers order, pick up, and pay for food or beverages at a counter, window, etc., and then carry the food or beverages to another location (either on or off the premises of such activities).

(18) *Cafeteria style operation.* The term ''cafeteria style'' operation means a food or beverage operation which is primarily self-service and in which the total cost of food or beverages selected by a customer is paid prior to the customer's being seated or is stated on a check provided to the customer prior to the customer's being seated and is paid by the customer to a cashier. Generally, operations are primarily self-service if food or beverages are ordered or selected by a customer at one location and carried by the customer from such location to the customer's seat. For example, cafeteria lines, buffets, and smorgasbords are primarily self-service. If, after a customer is seated, a food or beverage employee delivers items such as an item that required additional preparation after being selected by the customer, condiments, beverages, or refills at no additional cost to the customer, a food or beverage operation's status as primarily self-service would not be affected.

(19) *Less than the equivalent of 25 full-time employees.* For purposes of paragraph (f)(1)(iv) of this section, an employer shall be considered to employ less than the equivalent of 25 full-time employees at an establishment during a payroll period (as defined in section 3401(b) and the regulations thereunder) if the average number of employee hours worked per business day during a payroll period is less than 200 hours. The average number of employee hours worked per business day during a payroll period shall be computed by dividing the total number of hours worked during the period by all employees of the employer who are employed in a food or beverage operation by the average of the number of days during the period that each food or beverage operation at which such employees worked was open for business. If an employer operates both a food or beverage operation and a nonfood or beverage operation, and one or more of his employees work for both operations, the employer may make a good faith estimate of the number of hours such employees worked for each operation in a given payroll period. Similarly, in cases where one or more of an employer's employees work for more than one of such employer's food or beverage operations, a good faith estimate may be made of the number of hours such employees worked for each operation in a given payroll period. If there is more than one payroll period for the establishment, the payroll period which is used for the greatest number of employees shall be the payroll period for purposes of this paragraph (j)(19). For purposes of this paragraph (j)(19), employees who are employed in a food or beverage operation include all employees of the operation, not just food or beverage employees. The employees of an employer shall include all employees at all food or beverage operations who, along with the employees of such employer, would be treated as employees of a single employer under section 52 (a) or (b) (as in effect on September 3, 1982) and the regulations thereunder. For example, if an employer at a food or beverage operation is a member of a controlled group of corporations, then all employees of all corporations which are members of such controlled group

of corporations shall be treated as employed by each such employer for purposes of this paragraph.

(k) *Permission to submit information on magnetic tape.* For rules relating to permission to submit the information required by section 6053(c) and this section on magnetic tape of other media, see § 31.6011 (a)–8.

(l) *Recordkeeping requirements.* An employer shall keep records sufficient to substantiate any information returns, employer statements to employees, applications, or tip allocations made pursuant to section 6053(c) and this section. The records required by this paragraph shall be retained for 3 years after the due date of the return or statement to which they pertain.

(m) *Food or beverage operations outside the United States.* Employers at food or beverage operations outside the United States (as defined in section 7701(a)(9)) are not subject to the reporting requirements under section 6053(c) and this section.

(n) *Effective date.* This section is effective for calendar year 1983 and thereafter.

(96 Stat. 603, 26 U.S.C. 6053(c); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7906, 48 FR 36809, Aug. 15, 1983; 48 FR 40518, Sept. 8, 1983, as amended by T.D. 8039, 50 FR 29965, July 23, 1985; T.D. 8141, 52 FR 21511, June 8, 1987]

§ 31.6053–4 Substantiation requirements for tipped employees.

(a) *Substantiation of tip income*—(1) *In general.* An employee shall maintain sufficient evidence to establish the amount of tip income received by the employee during a taxable year. A daily record maintained by the employee (as described in paragraph (a)(2) of this section) shall constitute sufficient evidence. If the employee does not maintain a daily record, other evidence of the amount of tip income received during the year, such as documentary evidence (as described in paragraph (a)(3) of this section), shall constitute sufficient evidence, but only if such other evidence is as credible and as reliable as a daily record. However, notwithstanding any other provision of this paragraph (a) (1), a daily record or other evidence that is as credible and as reliable as a daily record may not be sufficient evidence if there are facts or circumstances which indicate that the employee received a larger amount of tip income. Moreover, oral statements of the employee, without corroboration, cannot constitute sufficient evidence.

(2) *Daily record.* The daily record shall state the employee's name and address, the employer's name, and the establishment's name. The daily record shall show for each work day the amount of cash tips and charge tips received directly from customers or from other employees, and the amount of tips, if any, paid out to other employees through tip sharing, tip pooling or other arrangements and the names of such employees. The record shall also show the date that each entry is made. Form 4070A, *Employee's Daily Record of Tips,* may be used to maintain such daily record. The daily record of tips received by an employee shall be prepared and maintained in such manner that each entry is made on or near the date the tip income is received. A daily record made on or near the date the tip income is received has a high degree of credibility not present with respect to a record prepared subsequent thereto when generally there is a lack of accurate recall. An entry is made ''near the date the tip income is received'' if the required information with respect to tips received and paid out by the employee for the day is recorded at a time when the employee has full present knowledge of those receipts and payments.

(3) *Documentary evidence.* Documentary evidence consists of copies of any documents that contain (i) amounts that were added to a check by customers as a tip and paid over to the employee or (ii) amounts that were paid by a customer for food or beverages with respect to which tips generally would be received by the employee. Examples of documentary evidence are copies of restaurant bills, credit card charges, or charges under any other arrangement (see § 31.6053–3(j)(4)) containing amounts added by the customer as a tip.

(b) *Retention of records.* Records maintained under this section shall be kept at all times available for inspection by authorized internal revenue officers or