

## Interim Guidance on Rev. Rul. 2012-18

### Announcement 2012-25

The Internal Revenue Service (Service) is providing administrative guidelines to examiners concerning Rev. Rul. 2012-18, published in the 2012-26 Internal Revenue Bulletin.<sup>1</sup> The Service is aware that some businesses may have to change automated or manual reporting systems in order to comply with the proper treatment of service charges as specified in Q&A 1 of Rev. Rul. 2012-18.

When performing a tip examination, examiners must ensure that distributed service charges are properly characterized as wages and not tips. Q&A 1 of Rev. Rul. 2012-18 reaffirms the factors that are used to determine whether payments constitute tips or service charges. Q&A 1 of Rev. Rul. 2012-18 provides that the absence of any of the following factors creates a doubt as to whether a payment is a tip and indicates that the payment may be a service charge:

- (1) The payment must be made free from compulsion;
- (2) The customer must have the unrestricted right to determine the amount;
- (3) The payment should not be the subject of negotiation or dictated by employer policy; and,
- (4) Generally, the customer has the right to determine who receives the

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<sup>1</sup> Among the topics covered in this revenue ruling are reporting and depositing of FICA taxes on tips, Section 3121(q) Notice and Demand issues, and the section 45B credit.

payment.

The Service is providing the interim guidance memorandum below to its examiners. The memorandum provides that, in limited circumstances, an examiner should apply Q&A 1 of Rev. Rul. 2012-18 prospectively to amounts paid on or after January 1, 2013, in order to allow businesses not currently in compliance additional time to amend their business practices and make needed system changes. The Service is seeking public comments regarding this interim guidance and whether additional time is needed to ensure that systems are compliant. Comments on the interim guidance may be submitted on or before September 24, 2012, either electronically at

[TIP.Program@irs.gov](mailto:TIP.Program@irs.gov) or in writing to:

Internal Revenue Service  
National Tip Reporting Compliance  
3251 North Evergreen Dr. NE  
Grand Rapids, MI 49525

In a future announcement, the Service will also solicit public comments on proposed changes to the Service's existing voluntary tip compliance agreements. Specifically, the Service is considering significant changes to the Tip Reporting Alternative Commitment (TRAC) program and other variations of TRAC agreements. Versions of the existing voluntary tip compliance agreements are available on the IRS website at Market Segment Understandings (MSU)

<http://www.irs.gov/businesses/small/article/0,,id=98944,00.html>. They may also be obtained from the IRS office listed above. The Service is interested in updating its suite of voluntary tip compliance agreements to place a greater emphasis on computations derived from Point of Sale systems and the use of electronic payment settlement methods, such as credit and debit cards. While employee education will remain a focus

of the Service's efforts, these new voluntary tip compliance agreements will increase the participants' reliance on internal control systems to improve employee tip reporting compliance.

Following is a copy of the interim guidance memorandum that examiners will use until procedures are published in the Internal Revenue Manual, after receiving and considering comments submitted in response to this Announcement.