

Department of Revenue Audits Target Restaurants

In a major shift of position, Missouri Department of Revenue (DOR) has apparently decided the employer, not the employee, shall be responsible for the employee's state income tax on underreported cash tip income. The negative consequences for restaurants are significant. Restaurants are being assessed 6% of the amount of underreported cash tips as calculated by the DOR's testing methodology – 6% being the highest individual income tax rate in Missouri.

In conducting the audits, DOR is separately calculating the tip percentage claimed on charge sales and the tip percentage claimed on cash sales. If the cash tip rate is less than 8%, DOR has deemed the shortfall to be underreported tip income and given the restaurant an assessment equal to 6% of the shortfall.

Based on the opinions of professionals, MRA believes the DOR has no authority for the assessments and, further, that the position taken by the Department puts the employer in an untenable position, because there is no authority for the employer to withhold additional Missouri income tax beyond the amount associated with the cash tip income reported by the employee.

MRA has received new information that the DOR may be contemplating adopting a more punitive position on future audits: that the charge tip percentage and the cash tip percentage should be the same. Accordingly, DOR's calculation of underreported cash tip income would be deemed greater under this methodology for restaurants with charge tip rates in excess of 8%.

To protect the interests of the industry, MRA will work to introduce legislation in Jefferson City during the 2015 session to preclude DOR from proceeding in this fashion. We will work tirelessly to secure its passage. In addition, MRA is evaluating available options to secure refunds of assessments restaurants have already paid as a result of this DOR audit practice.

MRA recommends all restaurants employing workers who receive tips take the following steps:

1. Remind employees verbally and disclose in writing in your employee handbook that the law clearly states all tips, both charge tips and cash tips, received must be reported to the employer.
2. Perform a separate calculation of the tip percentage claimed by employees on charge sales and the tip percentage claimed on cash sales.
3. Follow up with employees when the results look out of line, reminding them of the requirements of the law.
4. If your POS system allows, require employees to indicate cash tips received when closing out a ticket.
5. The employee should be required to sign off every day to confirm total charge tips and cash tips reported, either by signature on a tip form or through your POS system.

This form, designed by MRA allied member, Jeffrey L Katz, CPA with Freirich & Katz L.C. Certified Public Accountants, can be used to assist with the calculation recommended in step 2 above. A blank template of the form is available for download on the MRA website.

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