



October 17, 2025

The Honorable Scott Bessent
Secretary
United States Department of Treasury
1500 Pennsylvania Avenue, Northwest
Washington, DC 20220

Independent Restaurant Coalition Comment on IRS REG-110032-25

Dear Secretary Bessent,

I write today in my capacity as Executive Director of the Independent Restaurant Coalition (IRC) to encourage your Department to amend its proposed regulations on No Tax on Tips to ensure that all restaurant workers who earn variable income from customers – whether through tips, service charges or auto gratuities – can benefit from this important new policy. The list of job titles in restaurants that the Department of the Treasury has included in the regulations indicates that the Department and the Administration intend to maximize those who can claim the \$25,000 statutory deduction for their tipped income. However, as currently written, the proposed regulations may unintentionally prevent a significant portion of restaurant employees from utilizing the deduction.

Founded in 2020, the Independent Restaurant Coalition (IRC) has become the leading national voice for small, independent operators—working to secure economic relief, shape policy, and build a stronger future for the businesses that form the backbone of America’s food culture and economy. We work directly with restaurants and policy makers to craft practical solutions that create jobs and support economic growth. We stand ready to work with the Treasury Department to ensure the success of this policy for the millions of restaurant and bar workers it was designed to support.

Some facts about independent restaurants:

- Employ 11 million people—nearly 60% of the foodservice workforce—many in first jobs that build lifelong skills.
- Contribute billions annually in federal, state, and local taxes through income, payroll, sales, and property taxes.
- Act as primary outlets for small vineyards, sustaining the \$70B U.S. wine industry.
- Support nearly 40% of the \$30B craft beer industry through on-premise sales.
- Contribute over \$60B to the U.S. agricultural economy by sourcing local products.
- Fuel \$500B in supply-chain spending on equipment, packaging, and services.
- Anchor the \$278B culinary tourism economy, drawing visitors to authentic local dining.

Independent restaurants and bars employ millions of Americans and serve as economic anchors in every community. The Administration has the opportunity to support all the restaurant industry workers with a few small changes. These amendments to the proposed rule include:

1. Include service charges and automatic gratuities. Many restaurants use these systems to reduce confusion, provide stable income for their teams and streamline payroll. Allowing these earnings to qualify for the deduction will ensure these rules support small business innovation, not penalize it.

Online research might suggest that a restaurant service charge is akin to a charge for someone to come to your house to do utility or appliance work, like a trip fee. Other descriptions include comparisons to a ticket company fee for a concert ticket or a resort fee at a hotel. **But, in fact, service charges in restaurants are nothing like these fees.** They are not profit-boosting add-ons, nor are they let's-see-what-we-can-get-away-with tests for customers. As the restaurant-going public and the restaurant industry have evolved, service charges have become critical economic tools for restaurants to pay all of their workers a living wage, lessen the disparity between front-of and back-of-house employees, and eliminate the disparate incomes that come at the whims of personal appearance and other factors inherent in tipping.

Many service charges are simply automatic gratuities added to large parties to ensure an income stream for a server and staff that will serve less tables and have less turnover as a result of the large party. While these look like service charges, they are pre-determined tips, negotiable and agreed to in advance of a reservation or when a diner sits down as opposed to when the bill comes.

As restaurants have looked for ways to professionalize the industry and provide maximum compensation and benefits to their employees, a subset of the industry has settled on service charges as the best way to accomplish economic certainty. Not all service charges are created equally. It is imperative that a service charge that is eligible for any tax benefit be clearly communicated to the customer, of a reasonable amount, and used only to pay workers' salary and benefits.

Restaurant operators have carefully evaluated the employee impact of this proposed regulation and determined that excluding service charges and automatic gratuities would do more harm than good. If restaurants are compelled to return to a tipping-only model in order to access the tax benefit, the very workers this policy aims to help will, in fact, lose income. Automatic gratuity and service charge models have allowed restaurants to provide steadier paychecks, extend benefits to more employees, and narrow the gap between front-of and back-of-house wages. Reverting to a traditional tip system would reintroduce the volatility and inequity that service charges were designed to solve—leaving workers once again dependent on factors beyond their control rather than on the value of their work.

Recent compensation analyses across full-service, sit-down restaurants demonstrate that the difference between a tipping-only model and one supported by service charges is significant and consequential. In a typical two-week pay period for a restaurant of approximately 130 seats and 65 hourly employees (prevailing minimum wage \$16.30), replacing a service charge with an 18 percent tip rate would yield about \$43,000 in tips distributed across 3,000 hourly labor hours—an average of \$14.33 per hour in tips, resulting in a blended wage of roughly **\$31 per hour** when added to base pay. Under the same conditions, service-charge compensation produces an average of approximately **\$40 per hour**—a 22 percent increase in total earnings.

This difference is not anecdotal; it reflects a growing trend across the industry. Service-charge compensation structures enable restaurants to fund higher base pay for back-of-house and support roles and create predictable, equitable income for employees. **Excluding service charges from eligibility under the proposed rule would therefore undermine the regulation’s intent by decreasing wages,** destabilizing income, and discouraging the professionalization this policy intends to advance.

A regulation that prohibits workers paid by service charges from enjoying the same tax benefit as a tip would lead to significant change in the restaurant industry, push most if not all restaurants back to tipping, and exchange this four-year benefit for permanent change in the industry.

Voluntary is the wrong test. While §224 (d)(2)(A) clearly states that to qualify for the new deduction of income called No Tax on Tips a payment from a customer must be “paid voluntarily, without any consequence in the event of nonpayment is not the subject of negotiation, and is determined by the payor,” focusing exclusively on whether a payment from a customer to a restaurant employee is voluntary is not the right test.

The voluntary nature of the payment has less to do with a tip than the purpose and the end use of the payment. Just like tips, service charges are paid from a customer to a restaurant employee on the final bill. Just like tips, service charges are intended for the benefit of the restaurant employee. And just like tips, service charges are paid for the experience of dining.

The test for what constitutes a tip should include aspects such as the payor, the ultimate recipient, the use of the funds, and the fairness of excluding some restaurant wages and not others.

Voluntary is not properly applied. Unlike tips, service charges are fairer, more predictable, and an example of restaurant industry adaptation and innovation. Focusing solely on the voluntary nature of a tip versus a service charge being on a bill misses the nuances of service charges. While service charges may be printed on a bill or come as a line item in an electronic transaction many restaurants will allow diners to alter or eliminate them upon request.

While the Regulations give a number of examples that delineate between what is voluntary and what is compulsory, it does not need to be this complicated. Any service charge that is added to a bill in a restaurant or bar that fits the definition below should be treated as a tip.

As a result, we urge the Department to reconsider the definition of voluntary to include service charges.

Proposed New Standard: *Any payments from a restaurant to its workers derived from a service charge that is (1) clearly disclosed, (2) used exclusively for wages and/or benefits of otherwise eligible restaurant workers, and (3) is not excessive shall be considered to be a tip under the definition of this statute.*

2. Provide clear Federal preemption. States vary widely in their treatment of tip pooling. Making clear that this federal tax policy applies uniformly nationwide will simplify compliance, reduce administrative burden and allow the maximum number of restaurant workers to benefit.

Many current state laws on tip pooling will interfere with the Department's intent. More than a dozen states have laws limiting or prohibiting the pooling of tips with anyone who does not directly interact with customers. While the Treasury Regulations, as drafted, clearly allow for tip pooling, they are silent on what happens to those employees in states that do not allow tip pooling. Does the Treasury Department guidance supersede these state regulations allowing cooks or dishwashers to pool tips and benefit from the No Tax on Tips deduction?

Proposed solution: We recommend clear language in the regulations asserting federal primacy and ensuring workers in all states can benefit from this important deduction.

3. Clarify the interaction with the Fair Labor Standards Act (FLSA) Many back-of-house employees directly contribute to the customer experience but are not classified as “tipped employees” under the FLSA. Clear guidance will help employers apply the new policy correctly and avoid unnecessary confusion and audits.

Under the Fair Labor Standards Act (FLSA), only workers in customer-facing roles are legally eligible to receive tips. That means essential staff—who are often already making some of the lowest wages—could see no benefit from a policy focused solely on untaxed tips. While using service charges might address this, we urge the Treasury Department to ensure that the FLSA does not exclude any class of eligible restaurant workers from benefiting from No Tax on Tips.

While the proposed Regulations go deep on how and why the FLSA delineates what type of workers customarily receive tips and how the Treasury Department arrived at its listed of tipped workers, the IRC would recommend further consultation with the Department of Labor to ensure nothing in their rules and regulations would prohibit restaurant employees for benefiting from this policy.

Proposed solution: We recommend clear language in the regulations asserting federal primacy and remedying conflicts between the FLSA and the rule.

4. Allow for a transition of the rule for tax year 2025 to include service charges. In the absence of the critical changes noted above, at the very least, the IRC asks the Department to consider a transition rule for calendar year 2025 that would allow restaurants who have been operating on a service charge model to be included in the No Tax on Tips provision for 2025. This would give restaurants the time they need to make an adjustment to the new rules and still have their employees see this benefit. It would force service charge restaurants who want to have their employees be eligible for No Tax on Tips going forward to change their pay model, but it would not punish them for decisions that were made before No Tax on Tips was law when they set up current year pay models.

While the IRC is agnostic as to how you achieve these goals it is enormously important that the Department of the Treasury and the entire Administration focus on maximizing the impact of this new policy to benefit all restaurant workers – regardless of how their employers choose to pay them or where they live. These modest revisions will make the No Tax on Tips program easier to administer, more consistent across states, and more effective and putting money into the hands of the American workforce.

Thank you for considering these issues that are central to the operation of independent restaurants and for taking the time to try and find a solution that will benefit all restaurant workers – regardless of pay model or employer decisions on tipping. The IRC and I are always available to discuss these matters and help find a workable solution.

Sincerely,

Erika M. Polman

Executive Director
Independent Restaurant Coalition