

**Section 45B.—Credit for Portion of Employer Social Security Taxes Paid With Respect To Employee Cash Tips**

26 CFR 1.45B-1T: Credit for certain employer social security taxes paid with respect to employee tips (Temporary).

T.D. 8699

**DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 1**

**Credit for Employer Social Security Taxes Paid on Employee Tips**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations.

SUMMARY: This document removes the temporary regulations pertaining to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. The temporary regulations were published in the **Federal Register** on December 23, 1993. Statutory changes made by the Small Business Job Protection Act of 1996 have made these temporary regulations obsolete.

EFFECTIVE DATE: The removal of the temporary regulations is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

*Background*

On December 23, 1993, the IRS published temporary regulations (T.D. 8503 [1994-1 C.B. 17])(58 FR 68033) under section 45B of the Internal Revenue Code of 1986 (Code). Amendments made by section 1112(a) of the Small Business Job Protection Act of 1996 (Public Law 104-188) render the temporary regulations obsolete. Therefore, temporary regulation § 1.45B-1T is being removed.

On December 23, 1993, the IRS also issued a notice of proposed rulemaking (EE-71-93 [1994-1 C.B. 784])(58 FR 68091) under section 45B of the Code. This notice of proposed rulemaking is

being withdrawn in a separate document.

*Explanation of Provisions*

Section 45B of the Code describes a business tax credit allowable under section 38 for food and beverage establishments. The credit is equal to the employer's Federal Insurance Contributions Act (FICA) obligation attributable to certain employee tips. The credit is reduced, however, if the nontip wages paid to an employee during a month are less than the amount that would have been payable to the employee at the federal minimum wage rate. The temporary regulations provide that this credit is available only for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993. The temporary regulations also provide that the credit applies only to taxes paid on tips that are reported to the employer by its employees.

Section 1112(a) of the Small Business Job Protection Act of 1996 amended Code section 45B to provide that the credit is available for employer FICA taxes paid after December 31, 1993, regardless of when the services with respect to which the tips are received were performed. Section 1112(a) also provides that the credit is available whether or not the tips on which the employer FICA taxes were paid were reported to the employer by the employee. These provisions are effective as if included in the legislation under which section 45B was originally enacted, and thus render the temporary regulations obsolete.

*Drafting Information*

The principal author of these regulations is Jean M. Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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*Removal of Temporary Regulations*

**PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

**§ 1.45B-1T [Removed]**

Par. 2. Section 1.45B-1T is removed.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved December 11, 1996.

Donald C. Lubick,  
*Acting Assistant Secretary  
of the Treasury.*

(Filed by the Office of the Federal Register on December 19, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 20, 1996, 61 F.R. 67212)