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October 22, 2025

Hon. Scott Bessent
Secretary
Department of the Treasury
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Proposed Regulations under Section 224

Dear Mr. Bessent:

Enclosed please find comments on Proposed Regulations under Section 224 regarding the deduction for tip income. These comments are submitted on behalf of the Section of Taxation and have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Megan L. Brackney
Chair, Section of Taxation

Enclosure

cc: Kenneth Kies, Assistant Secretary of Tax Policy, Department of the Treasury and Acting Chief Counsel, Internal Revenue Service
Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Shelley Leonard, Deputy Tax Legislative Counsel, Department of the Treasury
Frank Bisignano, Chief Executive Officer, Internal Revenue Service
William M. Paul, Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical), Internal Revenue Service
Paul Butler, Associate Chief Counsel (Procedure & Administration), Internal Revenue Service
Lia Colbert, Commissioner, Small Business/Self-Employed Division, Internal Revenue Service
Jarod Koopman, Acting Chief Tax Compliance Officer, Internal Revenue Service
Erin Collins, National Taxpayer Advocate, Internal Revenue Service

AMERICAN BAR ASSOCIATION SECTION OF TAXATION

Comments on Proposed Regulations under Section 224 Regarding the Deduction for Tip Income

These comments (“**Comments**”) are submitted on behalf of the American Bar Association Section of Taxation (the “**Section**”) and have not been reviewed or approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Samantha Galvin and James Creech. Substantial contributions to these Comments were made by Rinu Cherian, Ish Dalal, Mary Kwon, Annette Nellen, Heather Posey, Michael Romero, and Emily Yaun. These Comments have been reviewed by Joseph Barry Schimmel, of the Committee on Government Submissions, John Colvin, Chair of the Committee on Government Submissions.

Although members of the Section may have clients who might be affected by the federal tax principles addressed by these Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or otherwise to influence the development or outcome of one or more specific issues addressed by, these Comments has participated in the preparation of the portion (or portions) of these Comments addressing those issues. Additionally, while the Section’s diverse membership includes government officials, no such official was involved in any part of the drafting or review of these Comments.

Contact: Samantha Galvin
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Date: October 22, 2025

EXECUTIVE SUMMARY

Section 224¹ of the Internal Revenue Code provides for the deduction of qualified tips for taxpayers who receive tips as part of their occupation and meet other criteria.² On September 22, 2025, the U.S. Department of the Treasury (“**Treasury**”) and the Internal Revenue Service (the “**Service**”) published proposed regulations under section 224 (the “**Proposed Regulations**”).³ The Proposed Regulations identify occupations that customarily and regularly received tips on or before December 31, 2024, and define “qualified tips” for purposes of the deduction.

We commend Treasury and the Service for expeditiously issuing guidance, and respectfully offer the following comments and recommendations regarding the Proposed Regulations:

1. Limit the anti-abuse rule in section Prop. Treas. Reg. § 1.224-1(c)(9) by narrowing the definition of ownership interest to exclude de minimis or incidental holdings and disqualifying employer-sourced tips from the deduction only if the tipped worker knew, or reasonably should have known, the source of the funds.
2. Refine the definition of Specified Service Trade or Business (“**SSTB**”) in Treas. Reg. § 1.199A-5 for section 224 purposes, by providing objective criteria for the term “reputation or skill,” defining the terms “appearance at an event” and “well known,” and adopting a de minimis safe harbor so that occasional demonstrations or media moments while working for a non-SSTB employer do not trigger SSTB classification.
3. Limit the requirement that qualified tips paid to self-employed taxpayers be included in payee statements furnished to the individual (*i.e.*, in the variations of Form 1099) to tax years beginning January 1, 2026, and later, and create a form that can be used by self-employed taxpayers to report their tip income, similar to Form 4137.
4. Publish the list of customarily and regularly tipped occupations as of December 31, 2024, in a revenue procedure that may be updated after final 2024 survey data becomes available.

¹ Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “**Code**”) and all “Treas. Reg. §” and Prop. Treas. Reg. §” references are to the Treasury regulations promulgated under the Code, all as in effect (or, in the case of proposed regulations which remain outstanding, as proposed) as of the date of these Comments.

² An Act to Provide for Reconciliation Pursuant to Title II of H. Con. Res. 14, commonly referred to as the One Big Beautiful Bill Act, P.L. 119-21, § 70201, 139 Stat. 72, 170-173 (2025) (the “**Act**”).

³ REG-110032-25, 90 Fed. Reg. 45,340 (Sept. 22, 2025).

BACKGROUND

Section 224 allows eligible individuals to deduct up to \$25,000 annually for qualified tips received in taxable years beginning after December 31, 2024.⁴ Amounts are not qualified tips unless they are reported on Forms W-2 or 1099 furnished to the taxpayer, or reported on Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*.⁵

The allowable tip income deduction phases out once modified adjusted gross income (“**MAGI**”) exceeds \$150,000 (or, \$300,000, if married filing jointly).⁶ The deduction for tips received in a trade or business, such as by a sole proprietor, cannot exceed the net income from that business.⁷ Net business income includes the tip income, since the tip income deduction itself is not a business deduction.⁸

No deduction is allowed for tips received by an employee whose employer’s trade business is a specified service trade or business (“**SSTB**”) as defined in section 199A(d)(2),⁹ or by an independent contractor whose own trade or business is an SSTB.¹⁰ For example, a singer employed by a restaurant will have qualified tips (assuming all other requirements are met) because the restaurant is not an SSTB. However, if an arts theater company employs the singer, the tips received by the singer will not qualify because that employer is an SSTB. Similarly, if self-employed, the singer operates as an SSTB (of performing arts), and no qualified tip deduction is allowed.

Qualified tips must be voluntarily determined and paid by a payor and not negotiated.¹¹ They must be in the form of cash, including credit/debit cards and gift cards, and received in an occupation which customarily and regularly received tips on or

⁴ P.L. 119-21, § 70201(j), 139 Stat. 72, 173 (2025). The deduction is scheduled to sunset after 2028. I.R.C. § 224(h).

⁵ I.R.C. § 224(a). The Act requires that information returns required under sections 6041, 6041A, 6050W, and 6051, separately account for cash tips, and provides a transition rule for tips required to be reported for periods before January 1, 2026. *See* P.L. 119-21, § 70201(f), (k), 139 Stat. 72, 172-173 (2025).

⁶ I.R.C. § 224(b)(2)(A).

⁷ I.R.C. § 224(c).

⁸ *Id.*

⁹ I.R.C. § 224(d)(2)(B). “[A]ny trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees.”

¹⁰ I.R.C. § 224(d)(2) (flush language).

¹¹ I.R.C. § 224(d)(2)(A).

before December 31, 2024.¹² A list of eligible occupations is published in the Proposed Regulations.¹³

A Social Security Number (SSN) is required to claim the tip income deduction.¹⁴ Married recipients claiming the tip deduction must file jointly,¹⁵ although the deduction is limited to \$25,000 annually regardless of filing status.¹⁶

Practically speaking, the income limitations strongly suggest that the taxpayers who can benefit from the tip income deduction are hardworking Americans with middle incomes.¹⁷ Applying assumptions from what constitutes the average household income, it is likely that many of the taxpayers who claim the section 224 deduction will be in the 12% income tax bracket.¹⁸ These taxpayers are unlikely to pay for professional tax preparation.

The Proposed Regulations provide details on customarily tipped occupations, what “voluntarily paid” means, how the SSTB and MAGI limitations operate, and more, and include several examples.¹⁹

DISCUSSION

I. No Ownership Interest in or Employment by Payor

A. Background

Section 224(d)(2)(C) allows the Secretary to establish other requirements for qualified tips; section 224(g) requires the Secretary to prescribe necessary anti-abuse regulations or guidance to prevent reclassification of income as qualified tips. The Proposed Regulations satisfy this requirement by providing that “[a] tip received by an employee or other service provider who has an ownership interest in or is employed by the payor of the tip is not a qualified tip.”²⁰

The Proposed Regulations do not define “ownership interest” (or address constructive ownership, attribution, or de minimis thresholds). This ambiguity could lead

¹² I.R.C. § 224(d)(1).

¹³ Prop. Treas. Reg. § 1.224-1(f)(1), Table 1.

¹⁴ I.R.C. § 224(e).

¹⁵ I.R.C. § 224(f).

¹⁶ I.R.C. § 224(b)(1).

¹⁷ Melissa Kollar and Zach Scherer, U.S. Census Bureau, Current Population Reports, P60-286, *Income in the United States: 2024* (Sept. 2025), available at <https://www2.census.gov/library/publications/2025/demo/p60-286.pdf>.

¹⁸ Rev. Proc. 2025-32, 2025-44 I.R.B.1.

¹⁹ REG-110032-25, 90 Fed. Reg. 45,340 (Sept. 22, 2025).

²⁰ Prop. Treas. Reg. § 1.224-1(c)(9).

to unexpected, widespread disqualification for tip recipients, and difficulty in reporting for both employers and recipients.

For example, a restaurant server has invested ten shares of Fortune 500 Corporation W's stock. Employees of Corporation W's local office hold a team dinner at the restaurant, and the server is assigned to their table. The bill is paid with a corporate credit card issued by W. The server's Form W-2 includes this tip as qualified, and the server reports it as such on their individual return. However, under the Proposed Regulations, this tip is disqualified because the server had an "ownership interest" in the payor.

B. Recommendations

We recommend that the final Regulations expressly define "ownership interest" and provide illustrative examples. As proposed, this rule will impose an impractical burden on employees and employers to separately determine and track tips sourced to entities in which the tipped employee only has a de minimis, incidental ownership interest.

We understand the need for anti-abuse rules and that Congress delegated this specific authority to Treasury, but an anti-abuse rule should be limited to situations where the tipped worker knows, or reasonably should know, that the ultimate source of funds is an employer. An example of a non-abusive situation would be where Employee E works for two employers, a law firm by day and a nearby restaurant in the evening. Partners of the law firm sometimes dine at that restaurant, and may happen to be served by E. They always leave a tip within the restaurant's usual range. The payment method may be a corporate credit card, or another method for which the diner later seeks reimbursement from the law firm.

Such tips would not be abusive but would be disqualified under the Proposed Regulations. These tips would likely appear as qualified on E's Form W-2, and E would be responsible for segregating and excluding such disqualified tips from the reported amount.

An example of a possibly abusive version would be partners of the law firm frequenting the restaurant, insisting upon being served by E, and always leaving a tip significantly larger than average. However, standard tips from occasional diners who may happen to work for a server's secondary employer should not be disqualified.

Any application of this rule needs to be limited to situations where it is reasonable for both a tipped worker to be aware of an employment or ownership relationship between the customer and tipped worker and the tip is above the customary range of tips ordinarily received.

II. Specified Service Trade or Business (SSTB) Limitation

A. Background

Section 224 states that an amount is not a qualified tip if the trade or business in the course of which the individual receives such amount is a specified service trade or business (as defined in section 199A(d)(2)) (SSTB). The flush language states that an employee is treated as receiving tips from an SSTB if their employer is an SSTB.²¹ The preamble to the Proposed Regulations requests comments on whether the existing SSTB rules at Treas. Reg. § 1.199A-5(b) (“SSTB rules”) should be refined for application to section 224.²²

SSTB’s include several professional services, as well as “any trade or business where the principal asset of such trade or business is the reputation or skill of [one] or more of its employees,”²³ which the SSTB rules define as a business that consists of a person earning income from endorsing products or services, licensing use of their name, image, likeness, etc., or appearing at an event in-person or via radio, television, or other media.²⁴

The Proposed Regulations clarify that these amounts are excluded from being qualified tips “regardless of whether the employee is performing service in an occupation listed in paragraph (f) of this section or whether that occupation is a specified service trade or business.”²⁵ The Proposed Regulations provide examples of a self-employed comedian (who performs services in the SSTB of performing arts) who cannot deduct tips, and a pianist employed by a hotel (which is not an SSTB) who can deduct tips.²⁶

B. Recommendations

We recommend that the final Regulations further clarify this rule, by adding: “your tips are not qualified tips eligible for a deduction, regardless of the type of service you are performing, if you are self-employed or work for an employer who is engaged in one of the following trade or businesses . . .” and then include a non-exclusive list of various SSTBs.

Additionally, we recommend that the final Regulations provide an example of an employee employed by a SSTB who cannot deduct tips. A suggestion for this example is a chauffeur employed by a performing artist who also drives the artist’s friends and

²¹ I.R.C. § 224(d)(2)(B).

²² 90 Fed. Reg. 45,340, 45,343 (Sept. 22, 2025).

²³ I.R.C. § 199A(d)(2), *referencing* I.R.C. § 1202(e)(3)(A).

²⁴ Treas. Reg. § 199A-5(b)(2)(xiv)(A)-(C)

²⁵ Prop. Treas. Reg. § 1.224-1(c)(4).

²⁶ Prop. Treas. Reg. § 1.224-1(c)(4)(ii), (iii).

family; although those friends and family may tip the chauffeur, he cannot deduct those tips because he is employed by an SSTB.

We recommend that the SSTB rules be further refined to provide more examples of self-employed taxpayers or SSTB employees where “the principal asset of such trade or business is the reputation or skill of 1 or more of its employees.”

For example, consider sous chef C, who is employed by a popular local restaurant (TTOC 105). At a private event catered by C and his family members, C also gives a cooking demonstration in addition to cooking for the event attendees with the assistance of the restaurant’s kitchen staff. Does this appearance make C an SSTB, disqualifying some or all of the tips received?²⁷ Or is this more like the singer employed by a restaurant who may still deduct tips received?

The SSTB rules do not provide sufficiently clear examples of trades or businesses that may be tipped occupations, but where the principal asset is the reputation or skill of one or more employees or owners. The only relevant example is Example 15, which does include a “well-known chef”, but the focus is on endorsement income which likely does not generate tips.²⁸ Example 16 is a “well-known actor” licensing name and likeness rights.²⁹ The SSTB rules do not define or provide examples of “[appearance] at an event”³⁰ or “well-known.”

We recommend that the final Regulations clarify whether a person who is not “well-known” and working for a non-SSTB employer at an event may nevertheless trigger tip disqualification if they make an incidental SSTB “appearance.”

III. Self-Employed Taxpayers

A. Background

Section 224 acknowledges that self-employed taxpayers are entitled to the qualified tip income deduction and limits the deduction to the net income allocable to the trade or business in which the qualified tips are received.³¹

Section 224 and the Proposed Regulation require that a qualified tip be included in statements furnished to the individual under sections 6041(d)(3), 6041A(e)(3), 6050W(f)(2) or 6051(a)(18) or on Form 4137.³² Section 6041 only requires businesses to issue Form 1099-NEC, *Non-Employee Compensation*, to contractors.³³ Yet, many

²⁷ Treas. Reg. § 1.199A-5(b)(2)(xiv)(C).

²⁸ Treas. Reg. § 1.199A-5(b)(3)(xv).

²⁹ Treas. Reg. § 1.199A-5(b)(3)(xvi).

³⁰ Treas. Reg. § 1.199A-5(b)(2)(xiv)(C).

³¹ I.R.C. § 224(c). *See also* Prop. Treas. Reg. § 1.224-1(d).

³² I.R.C. § 224(a); Prop. Treas. Reg. § 1.224-1(a).

³³ I.R.C. § 6041(a).

occupations listed in Table 1 of Prop. Treas. Reg. § 1.224-1(f) customarily and regularly tipped occupations as of December 31, 2024 are those involving self-employed taxpayers who provide services to households, such as home plumbers, pet caretakers, tutors, babysitters, and hairdressers.³⁴ These self-employed taxpayers will not receive Forms 1099-NEC from their customers. They may receive a form 1099-K, *Payment Card and Third Party Network Transactions*, if they accept payment by credit or debit card and the customer includes the tip on the charge, or if they use a third-party settlement organization (such as PayPal) and the customer transfers any tip in this manner, and such charges exceed \$20,000 and over 200 transactions for the year.³⁵

B. Recommendations

Due to the mid-year enactment and retroactive application of section 224, and the fact that the Service announced³⁶ that there will not be any changes to information return forms, we encourage the Service to provide relief to contractors who do not receive reports of their tips or other income on Forms 1099. We recommend the Service provide a safe harbor for contractors who maintain records (such as those required under section 6001) documenting an amount that would otherwise meet the definition of “qualified tips” under section 224 for 2025.

It's possible that future changes to Form 1099-K reporting thresholds will allow more self-employed taxpayers to utilize Form 1099-K to be eligible for the tip income deduction, but until that happens, we recommend the Service create a form similar to Form 4137 that can be used by self-employed taxpayers to report their tip income.

Additionally, many self-employed taxpayers eligible for the tip income deduction will not have tax advisers and are unlikely to read income tax regulations. They are more likely to seek information from irs.gov, including publications, or the Interactive Tax Assistant tool, to help them understand the qualifications and limitations of the tip income deduction. Accordingly, education initiatives, and other resources aimed at helping self-employed taxpayers are needed. The resources should strive to help taxpayers understand recordkeeping and compliance burdens and whether the tips they receive are qualified tips.

IV. List of Customarily and Regularly Tipped Occupations

A. Background

Section 224 defines qualified tips to mean amounts received in an occupation which customarily and regularly received tips on or before December 31, 2024.³⁷ The Proposed Regulations provide a list of occupations and state that only qualified tips

³⁴ Prop. Treas. Reg. § 1.224-1(f).

³⁵ I.R.C. § 6050W.

³⁶ IR-2025-82 (Aug. 7, 2025).

³⁷ I.R.C. § 224(d)(1).

received in connection with the occupations listed in Table 1 are eligible for the deduction.³⁸ The list was derived from data collected during or before 2023, *e.g.*, 2023 confidential return data and survey data from the 2023 Panel Study of Income Dynamics (based on data gathered for 2022).³⁹ It is certainly possible that this data is incomplete. For example, it does not include gas station attendants in the Transportation and Delivery category. The state of New Jersey requires such attendants, and outside of New Jersey, some stations will pump gasoline for customers who need assistance. A tip is customary for such workers.

There may also be an occupation that the IRS initially determined was not regularly tipped, but further investigation reveals that a subset of individuals in that occupation do in fact receive tips. For example, pilots of private jets for businesses may regularly receive tips, even though most airplane pilots do not.

B. Recommendations

We recommend that the Service also publish Table 1 as a revenue procedure and update the list of occupations annually with modifications to the revenue procedure, to avoid the need to reissue a regulation. Such updates would only be necessary if additional occupations are determined to be tipped occupations which customarily and regularly received tips on or before December 31, 2024.⁴⁰ The list should also be posted on [irs.gov](https://www.irs.gov) for easy access by tipped individuals.

³⁸ Prop. Treas. Reg. § 1.224-1(f).

³⁹ Preamble to Prop. Treas. Reg. § 1.224-1, 90 Fed. Reg. 45,340, 45,348 (Sept. 22, 2025).

⁴⁰ For example, once income tax return data for 2024 is available, or the 2024 Panel Study of Income Dynamics (based on data gathered in 2025) is released.