



Robert W. Wood

THE TAX LAWYER

Mar. 17 2012 — 6:32 am

Tax Tips On Tips From Mario Batali

Celebrity chef turned talk show host [Mario Batali](#) has been in pasta-hot water up to his orange Crocs, but not for over-salting the water or undercooking the pesto. Nope, the primavera scandal was over allegations he illegally confiscated tips from his employees. Talk about eating off of someone else's plate!

According to a [lawsuit](#) brought by over 1,000 employees, Batali and business partner Joseph Bastianich skimmed tips, confiscating 4 to 5% of all tips made from wine sales. This Batali-sized share of the tip money was supposed to go to "wine research" and to replace broken glasses. See [Batali Agrees to \\$5.25M Server-Tip Suit Accord](#). Sounds logical perhaps, especially in the chef-eat-chef world of competitive dining.

However, the suit claims the tip jar just went into Batali's bloated pockets. What a croc! Smoothing it out like warm chocolate sauce, Batali agreed to pay \$5.25 million to settle the suit.

Talking of tips raises both employment and tax rules, so here are 10 tips about tips:



1. **Tips Belong to the Employee.** Tips are to be retained by the employee and can't be taken by the employer. But see #2 below.
2. **Tip Pooling is Allowed.** Employees who regularly receive tips (waiters, bartenders and bus boys) can pool their tips. Chefs, dishwashers and management cannot.
3. **Service Charges Aren't Tips.** Chefs, dishwashers and management can only receive a portion of mandatory service charges. These are not considered tips so can be distributed as the employer sees fit.
4. **Tips are Taxable.** Employees must claim all tips as income. This includes tips the employer pays over to employees for charge customers and tips employees received directly from customers.
5. **They're Wages.** Even though employees receive tips from customers, they are generally subject to withholding by the employer.
6. **Employees Must Report.** Employees report tip income on [Form 4070](#), Employee's Report of Tips to Employer. This signed report, due the 10th of the month after the tips are received shows:
 - Employee's name, address, and Social Security number;
 - Employer's name and address;
 - The month or period; and
 - Total tips received. (No report is required for months when tips are less than \$20.)
7. **Employer Reporting.** Employers must collect income tax, employee Social Security tax and employee Medicare tax on tips reported by employees. See [Failing To Pay Employment Taxes Means Personal Liability](#). The employer can collect these taxes from an employee's wages (withhold excess amounts from wages to allow for the tips).

8. **Allocation of Tips.** Employers must ensure total tip income reported is at least 8% of total receipts for that pay period. If not, the employer allocates the difference between actual tip income reported and 8% of gross receipts.
9. **IRS Form W-2.** The amount of tip income allocated to each employee is shown in box 8 of their [Form W-2](#) for the year.
10. **Tip Reporting.** Employers operating large food or beverage establishments must file [Form 8027](#), Employer's Annual Information Return of Tip Income and Allocated Tips, to report employee tips.

For more, see:

[Batali Settles Wage Lawsuit for \\$5 Million](#)

[Tax Tips -Restaurant](#)

[Employee Benefits – Restaurant Tax Tips](#)

[IRS Publication 1244, Employee's Daily Record of Tips and Report to Employer](#)

[Employers Who Violate Tax Law May Go To Jail](#)

[IRS Nightmare: What Employment Taxes?](#)

[Personal Tax Liability When A Business Goes Under](#)

[Supreme Court Deaf To Payroll Tax Woes](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*