

# Anchin Alert

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**Anchin, Block & Anchin LLP**  
**Accountants and Advisors**



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## **Will your restaurant continue to charge service charges in 2014?**

Starting January 1, 2014 the IRS will enforce a rule related to mandatory fixed gratuities. Any mandatory fixed gratuity collected is considered a service charge and should be treated as wages. In 2013, the IRS clarified the definition of a tip versus a service charge. There are four specific guidelines for differentiating between a service charge and a tip:

- The customer's payment must be made free from compulsion;
- The customer must have the unrestricted right to determine the amount;
- The payment should not be the subject of negotiation or dictated by the employer policy; and
- Generally, the customer has the right to determine who receives the payment.

If your restaurant has been including mandatory fixed gratuity on the bill, these gratuities should be classified as service charges and constitute non-tip wages for employees. If a service charge is collected, employers must:

- Report the amount of the service charge distributed to the employees as FICA wages;
- Withhold the employees share of FICA taxes from each payment; and
- Pay the employer's share of FICA taxes with respect to each payment.

Also, employers are not entitled to receive a dollar-for-dollar income tax credit for FICA taxes paid on service charges as opposed to tips where a credit is available.

The difference between a tip and service charge is an important distinction that may create concerns about determining hourly wages and overtime pay. Employers should consider different strategies to comply with the new rule. Some establishments are looking into getting rid of mandatory tips while others are looking into charging a mandatory tip for all bills. Employers should consider whether to continue to collect a service charge or plan for other ways to compensate employees.

For more information, please contact your Anchin Relationship Partner or Greg Wank, Practice Leader in Anchin's Food and Beverage Industry Group, at (212) 840-3456.

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