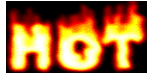




"Educating & Consulting The Private Club Industry"

November 2011 **Revision**

We hope that you find this brief newsletter of interest and that it provides you with useful and meaningful information. If you have any questions about any of the topics or issues, please do not hesitate to give me a call.



## **Club Tax Book Issues REVISION!!**

**Voluntary Gratuity Vs. Mandatory Service Charge** – An **error** was made in my November 2011 newsletter and the reason for this **REVISION**. California has **not** changed its rules regarding "mandatory service charges" as I alluded to. The purpose of my newsletter was not intended to be an interpretation of local laws as it applies to Clubs. That is too difficult to keep up with. The purpose was to point out that using the words "Service Charge" may have a number of various meanings to a customer and an employee. I question whether we in the Club Industry should begin using other terms, making it clear that the Club is retaining part or all of the funds vs. being 100% distributed to the appropriate wait staff as tips.

**Example:** If a table of 10 is charged a "Mandatory Service Charge", does the customer think this cash goes to the house or to the waiter? If we study each and every area in the country, I believe we will find various thoughts and interpretations. Thus, should the Club Industry avoid this term "Service Charge" and begin using terms such as "Club Charge"; "House Charge"; "Club Fee", etc.

The following clarification regarding California Law is provided by; Gail Egan, Attorney and CPA with *Egan & Egan, CPA's*:

### **MANDATORY SERVICE CHARGE - "TIPS" ©**

Recently, many of you may have read some information which we think was erroneous and need to set the record straight for those operating within the State of California.

The issue of tips has been hotly contested by employees as employers have withheld money, administrative fees, etc.

California Labor Code Section 351 prohibits employers from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. "Gratuity" is defined a tip, gratuity, or money that has been or left for an employee by a patron of a business over and above the actual amount due for services rendered or for goods, food, drink, articles sold or served to patrons. (Read the word patron as member.)

Is a mandatory service charge a tip or gratuity? The State says NO if the mandatory service charge is the amount that a patron is required to pay based on a contractual agreement or a specified required service amount listed on the menu of an establishment. These are amounts considered as amounts owed to the entity and are not the property of the employee. Distribution of the mandatory service charge ("MSC") is then at the discretion of the employer.

Thus, entities (clubs) must evaluate the facts and circumstances regarding their service charge to determine if it would be construed as a gratuity/tip or a MSC.

Many Clubs have stated service charges added as a percentage to the point of sale check or in banquet operations; it is stated on the contract. These charges should be considered MSC and not a tip. We are aware that many yacht clubs have an optional tip line on their point of sale tickets. Thus, this amount would be considered a gratuity and the property of the employee. Tip pooling and distribution is permitted. However, 100% of the voluntarily tip/gratuity indicated by the member should be distributed.

This monograph is not intended to provide legal advice but general information which should be evaluated in light of your specific circumstances. We always welcome the opportunity to speak with you.  
Egan & Egan [gail@egancpa.com](mailto:gail@egancpa.com)

With the above correction regarding California Clubs, there are the continuing differences nationwide in state sales tax rules as they apply to "Mandatory Service Charge", and the payout rules as they apply to federal wage and hour overtime computations. Club Controllers must become experts in the field of payroll to insure each and every federal, state and local law is complied with. A truly daunting task!

Thanks to the many professionals, including: Rand Huguely; Gail Egan; Ray Benetti; Brian Potiker; Mark Hennelly; and Richard O'Leary, just to name a few for your e-mails regarding the California law.

Visit [www.clubtax.com](http://www.clubtax.com) for more info or call us at 561-776-0452. To Subscribe/unsubscribe, e-mail [info@clubtax.com](mailto:info@clubtax.com).