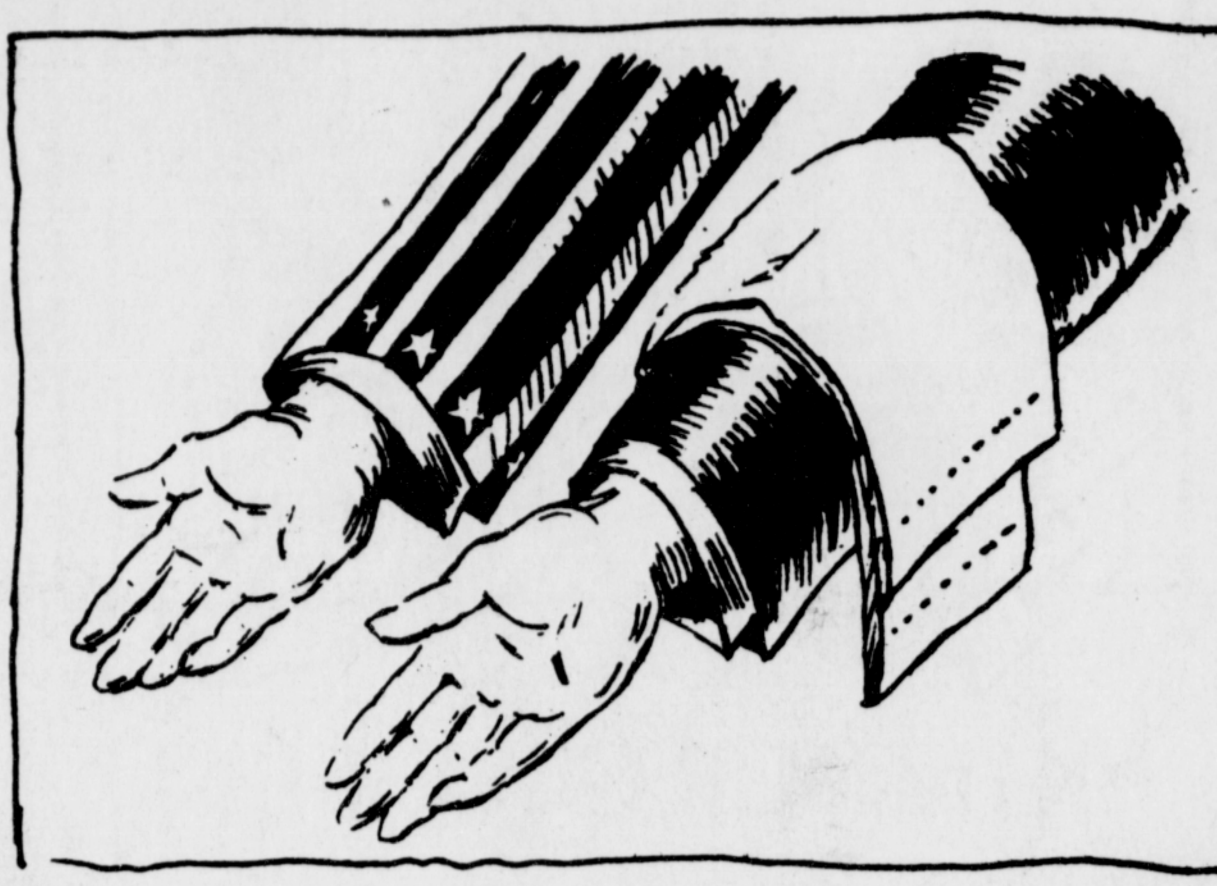
TIP TAX TYRANNY

"TIPPING IS NOT A CITY IN CHINA."
— POPULAR CAFE SIGN



REED DARMON

James Madison introduced an amendment in the early days of the Constitution to curtail Congress' enthusiasm for granting itself pay raises. His thought was that such grabs at the public purse should be voted on during the electoral campaigns of Congressional aspirants and incumbents, not voted for themselves once they were safely in office and temporarily out of reach of the electorate. People are still trying to get the amendment passed two hundred years later. The most recent move by Congress to increase its wages has been to attach their pay raise onto a measure to aid the nation's homeless.

At the same time Congress elevates its members' net worth, the Internal Revenue Service threatens to balance the national debt by raising the federal tax on tips received by the nation's waitresses, waiters and bartenders. The present tax is eight percent of the gross receipts of a food and/or beverage service establishment, which caused a furor in 1982 when the law was passed by Congress. The IRS plans to raise it to ten or thirteen percent.

Taxes on tips have been in effect since the initiation of income tax, and the declaration of monthly tips in excess of twenty dollars has been required since 1965. Section 314 of the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA) requires that waitresses and waiters, cocktail waitresses and bartenders must declare all of their tips. The combined income from tips declared by employees of food and beverage establishments must be at least eight percent of the gross receipts, and their employers are responsible for withholding taxes on both base pay and reported tips. TEFRA does not apply to places that employ less than ten, and it does not require other workers who receive gratuities, such as cab drivers, beauticians or parking attendants, to report their tips.

The IRS justified TEFRA by accusing waitresses, waiters and bartenders of dishonestly reporting lower tips than they received, and blamed the law on the industry as a whole for cheating and poor bookkeeping. When TEFRA went into effect it was greeted with a wild outburst of indignation and organizing to repeal it, but the opposition lost its energy and collapsed soon afterward. Lawsuits that questioned TEFRA's constitutionality were dismissed and plans to "paper the White House with petitions" were abandoned. In Oregon, at least, the state legislature approved in 1985 a bill introduced by Clatsop County Representative Tom Hanlon that made food and beverage service workers eligible for state unemployment and disability compensation benefits based on tips as well as wages. Previously these benefits were based soley on wages.

"Since we have begun paying taxes on all of our tips our paychecks are almost nonexistent," says Linda Van Hook, an Astoria waitress who helped organize the TEFRA resistance in Oregon and was a sponser of Hanlon's unemployment and compensation bill. "We literally live on our tips. The IRS is working on the assumption that we are making eight percent in tips from every table we wait on. Because our paychecks are so small we are forced to rely on our tips to pay rent and food. It makes many of us feel that we are almost in a position of begging for tips from our customers so that we can survive."

Waitresses, waiters and bartenders are not represented by a lobby and their jobs unjustifiably lack the prestige of other public relations positions. They work odd shifts for minimum wages — and often for less — and are among the lowest paid in the country; their average annual earnings are less than six thousand dollars. In many states tips are considered a part of wages — instead of making a minimum of three dollars and thirty-five cents an hour, food service workers are paid less because part of their tips are applied to their base wages. Most employees of the restaurant profession have no company insurance programs or pension plans, and most are non-union.

The net earnings of the average waitress and waiter have been reduced since TEFRA's inception by about twenty-five percent, or one out of four paychecks. The loss is probably hardest on restaurant and cocktail waitresses who are single-mothers, and by ethnic minorities who have few employment options.

TEFRA is an example of how a government usually survives on wealth extracted from its least powerful citizens. Unfairly overtaxing the most vulnerable sections of society to support a government that withdraws from its societal obligations and transfers huge sums of public money to those who are already wealthy and seldom pay taxes is, to say the least, discrimnatory. The people who have lost most of the benefits of their tax money are forced to pay higher taxes to make up for the large deficits the shift of public wealth has caused. And as the nation turns increasingly toward a service economy wage averages decrease, which means that the government will demand more from those less able to pay.

Representative Hanlon has introduced a bill in the current state legislative session that if passed will be sent to Congress requesting that it repeal TEFRA. "The eight percent tip taxes originally picked on one of the weakest political sectors of our society," Hanlon said. "Now the IRS is at it again, trying to raise the presumption that tips average thirteen percent. It is not so and it is not right."

The number of the measure is House Joint Memorial (HJM)-6. A memorial of this type is an easy piece of legislation, hardly more than symbolic, lacking any power except as a gesture of collective opinion by a lesser political body addressed to a more powerful one. Ultimately the issue should take the form of a referendum, and if as a result of popular vote the state supreme court rules against TEFRA because it places an unfair burden upon a large portion of the state's citizens, and if other states are roused to take similar actions, the U.S. Supreme Court will eventually have to consider TEFRA, if Congress has not by then repealed it because of public and legislative pressure. In the meantime public support must be aroused with initiative petitions, memorials of support from city and county commissions, and support and sponsorship from unions, political organizations and influential individuals. Relief from TEFRA will by no means be immediate or without the hard work and long hours necessary for grassroots organizing in the state and nation.

"I give the taxman all my money/He says I owe a little bit more," Eddie Clearwater sings in a song he wrote, "Mr. IRS Man." "I don't mind paying my taxes (but) please don't take more than I make. . . ."

— MICHAEL PAUL McCUSKER

PAT OLIPHANT

FIGHT TEFRA

As the defecit in our government continues to grow, Congress will be examining all taxable income. One of the areas I have read that they are scrutinizing at this time is the area of tipped income. As of 1982 with the implementation of the Tax Equity and Fiscal Responsibility Act, all tipped employees in the food and beverage industry have been required to claim in tips at least eight percent of the gross sales. The IRS assumes we make at least eight percent. They are now considering upping the percentage from eight to ten and possibly as much as thirteen percent.

In order to protect ourselves we have to keep an accurate record every day of exactly what we have made in tips. This process is very time consuming. Without records we are automatically considered guilty until proven innocent. I find this very ironic in a governmental system that is based on the premise of "innocent until proven guilty." The IRS is doing its best to put us back in the dark ages.

In order to prevent the IRS from raising the percentage of tipped income claimed, our industry as a unit needs to stand up and be counted. If we don't fight for ourselves the IRS will eventually bleed us dry. As it stands, our industry has very few benefits. Very few places offer any insurance benefits or any kind of a retirement program. Many of the establishments also get by without paying the minimum wage by using tip credits. In this system tips are calculated in with the wages to determine your base pay. (In some places the wage is less than two dollars an hour.)

For the above reasons it is very important that we hold the line on taxable tips. As it stands right now, very few waitresses, waiters and beverage servers who report their tips receive more than a fifty dollar paycheck for two weeks work after taxes. For single parents trying to raise their children, every penny counts.

Start thinking about the impact our industry has on the state of Oregon. In many respects anyone in the restaurant and beverage industry is a goodwill ambassador. We cater every day to the tourist industry. We give the tourist good service, friendly faces, lots of directions and we offer suggestions on things to do and see in our state. Use these opportunities to promote our cause and make people aware of our plight. Start writing letters to our legislators and anyone else who will listen. Be aware and get involved. With Respresentative Tom Hanlon's support last time we are able to win our battle for unemployment and disability benefitis based on tips and wages combines. The only way we can win again is to stay involved. There are a lot of us out there. Please do your part to help.

— LINDA VAN HOOK