

**INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM**
February 15, 2000

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Appeals Office

Taxpayer's Names:

Taxpayer's Number:

Taxpayer's Address:

Tax Years Ended:

Date of Conference:

LEGEND:

Taxpayer =

Year A =

City B =

ISSUE:

In computing the Taxpayer's self-employment tax, is the Taxpayer allowed to claim depreciation deductions on a vessel the basis of which has been reduced to zero by reason of section 7518(f) of the Internal Revenue Code?

CONCLUSION:

The Taxpayer is not entitled to claim any depreciation deduction for self-employment purposes on a vessel the basis of which has been reduced to zero by reason of section 7518(f) of the Internal Revenue Code.

FACTS:

Taxpayer is a commercial fisherman. During Year A, Taxpayer deposited and withdrew monies from his Capital Construction Fund (CCF) to acquire a fishing vessel. Taxpayer reduced his basis to zero in the vessel the basis reduction of which equaled the amount of the withdrawal from the CCF account to purchase the vessel. The Taxpayer, however, did not reduce the basis in the vessel for self-employment tax

purposes and depreciated his fishing vessel based on the purchase price in determining his net earnings from self-employment. On audit, the City B district office asserted that the Taxpayer's position was without legal authority.

LAW AND ANALYSIS:

Section 607(a) of the Merchant Marine Act (MMA) provides that any citizen of the United States owning or leasing one or more eligible vessels may enter into an agreement under section 607 with the Secretary of Commerce to establish a capital construction fund for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels built in the United States and documented under the laws of the United States for operation in the fisheries of the United States. The statutory rules in section 607 of the MMA relating to tax incentives for capital construction funds were codified by the Tax Reform Act of 1986 in section 7518.

Section 7518(a)(1) provides that the amount that may be deposited for any taxable year in a fund may not exceed the sum of certain specified amounts, including that portion of the taxable income of the owner or lessee for the year (computed as provided in chapter 1 but without regard to the carryback of any net operating loss or net capital loss and without regard to section 7518) that is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Section 7518(c)(1)(A) provides that taxable income (determined without regard to section 7518 and section 607 of the MMA) for the taxable year is reduced by the amount deposited for the tax year attributable to the operation of the agreement vessels.

If a qualified withdrawal from a taxpayer's CCF ordinary or capital gain account is made for the acquisition, construction or reconstruction of a qualified vessel, section 7518(f) provides that the basis of such vessel shall be reduced by an amount equal to such withdrawal.

Section 1401(a) of the Code imposes a tax, in addition to other taxes, on the self-employment income of every individual.

Section 1402(b) defines self-employment income as the net earnings from self-employment of an individual during any taxable year, subject to certain exclusions.

Section 1402(a) of the Code provides that the term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by Subtitle A attributable to such trade or business.

Section 167(a) of the Code provides a depreciation deduction as a reasonable

allowance for the exhaustion, wear and tear of property used in a trade or business.

It is agreed that a taxpayer's qualified deposits into a CCF reduce the taxpayer's taxable income for income tax purposes and do not reduce a taxpayer's self-employment income. Since a taxpayer does not benefit by having the taxpayer's self-employment income reduced by qualified deposits into a CCF, the Taxpayer argues that the requirement under section 7518(f) to reduce the basis of a vessel purchased with qualified withdrawals from a CCF should apply only for income tax purposes. The taxpayer, therefore, argues that the taxpayer should still have a depreciable basis in the vessel solely for purposes of computing net earnings from self-employment.

The taxpayer's arguments are based on symmetric treatment, but fail to provide any statutory support for the position advanced. The applicable statutory provisions do not support the Taxpayer's position.

In determining net earnings from self-employment, section 1402(a) provides that the individual's gross income from any trade or business shall be reduced by deductions allowed by Subtitle A attributable to such trade or business. The determination of whether a particular deduction is available depends on the applicable provision. In the case of section 167, property is depreciable only if the property has basis.

In the present case, the Taxpayer's basis in the vessel purchased entirely with qualified withdrawals from the CCF is directly impacted by section 7518(f) the application of which reduced the Taxpayer's basis in the vessel to zero. The lack of basis in the vessel precludes the Taxpayer from claiming any depreciation on the vessel under section 167. Nevertheless, the Taxpayer contends that the vessel has a depreciable basis for purposes of self-employment tax because the required reduction in basis under section 7518(f) applies only for income tax purposes. We disagree.

The wording of section 7518(f) is clearly at odds with the Taxpayer's interpretation. By its terms, the required reduction in basis under section 7518(f) is unqualified and not limited to a particular context. Section 7518(f) does not purport to be applicable only for income tax purposes. Accordingly, the lack of basis in the vessel by reason of section 7518(f) also precludes the Taxpayer from claiming any depreciation on the vessel for self-employment purposes.

CAVEAT:

A copy of this technical advice memorandum is to be given to the Taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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