

Internal Revenue Service

Department of the Treasury

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Date:
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Legend

- Taxpayer =
- Vessel =
- Country A =
- Country B =
- State A =

Dear _____ :

This is in response to your letter dated January 24, 2001, in which you request a ruling on whether services performed by employees working on board a cruising vessel are considered employment as defined in sections 3121(b)(4) and 3306(c)(4) of the Internal Revenue Code (the Code) for purposes of the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA), respectively.

Taxpayer owns and operates a vessel that provides entertainment and gaming on “cruises to nowhere” and international cruises. Taxpayer is a _____ corporation. The vessel is registered under the laws of Country A. The vessel operates from a port in State A. It has a crew of between 150 to 200 people, the majority of whom are non-citizens of the United States.

The vessel generally conducts two “cruises to nowhere” per day. Taxpayer represents that these cruises involve sailing outside the territorial waters of State A, but staying within the territorial waters of the United States. The vessel has a restaurant on board which serves meals to passengers, as well as several bars where liquor, beverages, and snacks are served. Gaming activities are available on board when the vessel is outside State A waters. Entertainment is also available on board.

At least once per month, the vessel sails to Country B and provides the identical services and entertainment activities outside State A waters. Passengers are not allowed to disembark the vessel until it returns to State A.

Specifically, you request the following rulings:

1. The services performed on the vessel by individuals who are not citizens of the United States do not constitute employment under section 3121(b)(4) of the Code for purposes of FICA taxes imposed by sections 3101 and 3111.
2. The services performed on the vessel by both individuals who are not citizens of United States and individuals who are citizens of the United States do not constitute employment under section 3306(c)(4) for purposes of the FUTA tax imposed by section 3301.

LAW AND ANALYSIS

Sections 3101 and 3111 impose FICA taxes upon the employee and employer, respectively, and section 3301 imposes FUTA tax upon the employer with respect to wages received by the employee from the employer for employment.

Section 3121(b)(4) of the Code excludes from “employment,” for FICA purposes, services performed on or in connection with a vessel that is not an American vessel, provided that (1) the individual is employed on and in connection with such vessel when it is outside the United States, and (2)(a) such individual is not a citizen of the United States or (b) the employer is not an American employer.¹”

Treas. Reg. §31.3121(b)(4)-1(b) explains that the performance of services on and in connection with a vessel includes services performed by employees as officers or members of the crew.

Treas. Reg. §31.3121(b)(4)-1(d) provides, in relevant part, that:

[s]ervices performed within the United States on or in connection with a non-American vessel . . . for an employer by an employee who is not a citizen of the United States are excepted from employment, irrespective of whether the employer is or is not an American employer, provided the employee also is employed by such employer on and in connection with the vessel . . . when outside the United States.

Treas. Reg. §31.3121(b)(4)-1(e) provides that services performed outside the United States on or in connection with a non-American vessel by an employee who is not a United States citizen does not constitute employment.

¹For purposes of section 3121 of the Code, the term “citizen of the United States” includes citizens of the United States, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. See Treas. Reg. §31.3121(e)-1(b).

Section 3306(c)(4) of the Code provides a similar exclusion from “employment” for FUTA purposes, by excluding from employment “services performed on or in connection with a vessel ... not an American vessel ... if the employee is employed on and in connection with such vessel ... when outside the United States.”

Unlike section 3121(b)(4) of the Code, however, section 3306(c)(4) of the Code does not require an employee to be a non-citizen for the services to be exempt from inclusion as “employment.” Rather, both citizens and non-citizens are included in the scope of application, so long as they perform services on and in connection with a non-American vessel outside the United States.

Treas. Reg. 31.3306(c)(4)-1(a) further explains that services performed within the United States on or in connection with a non-American vessel are excepted from employment if the employee is employed by the employer on and in connection with the vessel when it is outside the United States.

The term “American vessel” is defined in sections 3121(f) and 3306(m) of the Code. Both sections define the term identically:

For purposes of this chapter, the term “American vessel” means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State

The vessel, as represented by the Taxpayer, is registered under the laws of Country A. It is neither documented nor numbered under the laws of the United States. Therefore, it does not satisfy the definition of an American vessel under sections 3121(f) and 3306(m) of the Code for purposes of the exemptions from the definition of employment under sections 3121(b)(4) and 3306(c)(4), respectively.

The Taxpayer represents that the vessel generally makes two daily “cruises to nowhere” which involve sailing outside the territorial waters of State A, but staying within the territorial waters of the United States. The Taxpayer also represents that the vessel makes at least one trip per month to Country B.

Accordingly, based on the information submitted and the representations made, we rule that:

1. The services performed on the vessel by individuals who are not citizens of the United States do not constitute employment under section 3121(b)(4) of the Code for purposes of FICA taxes imposed by sections 3101 and 3111.
2. The services performed on the vessel by both individuals who are not citizens of United States and individuals who are citizens of the United States do not constitute

employment under section 3306(c)(4) for purposes of the FUTA tax imposed by section 3301.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,
Will E. McLeod
Assistant Chief, Employment Tax Branch 1
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt and Government Entities)