



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

July 15, 2014

Number: **2014-0027**  
Release Date: 9/26/2014

CONEX-124218-14

UIL: 3121.02-00

Dear :

Thank you for your email dated May 22, 2014, and our telephone conversation on June 26, 2014, in which you expressed concern that fishermen are avoiding paying employment taxes because they are not subject to employment tax withholding under the Internal Revenue Code (Code).

Although my office is not in a position to make legislative changes, as we discussed, I am providing you some background information about the law as it relates to fishermen that I hope will help you.

Sections 3101 and 3111 of the Code impose Federal Insurance Contributions Act (FICA) taxes on employees and employers, respectively. FICA taxes apply to "wages," as defined in Code section 3121(a), that employers pay for "employment," as defined in section 3121(b).

Under Code section 3121(b)(20), services performed by an individual on a fishing boat are not included as employment for purposes of the FICA if performed under an arrangement with the owner or operator of the boat under which:

- The individual receives only a share of the boat's catch or the proceeds from such catch.
- The amount of the individual's share depends on the amount of the boat's catch.
- The individual receives no other cash remuneration beyond remuneration that does not exceed \$100 per trip, is contingent on a minimum catch, and is paid solely for additional duties for which additional cash remuneration is

traditional in the industry (for example, compensation for services performed as a cook).

In addition, the operating crew of the boat must normally be made up of fewer than 10 individuals, which means that the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals. Services excepted from employment under section 3121(b)(20) for FICA tax purposes are also excepted from the definition of wages for purposes of income tax withholding (Code section 3401(a)(17)).

The result of these provisions is to treat fishermen who meet the exception of section 3121(b)(20) as engaged in a trade or business for purposes of self-employment tax (Code section 1402(c)(2)(F)). Thus, these individuals include their fishing income on their individual income tax returns, and pay self-employment tax and income tax with those returns.

Although these individuals are not subject to withholding for FICA and income tax purposes, they are subject to the estimated tax rules. Estimated tax is used to pay income tax and self-employment tax, as well as other taxes and amounts reported on a tax return. An individual who does not pay enough through withholding or estimated tax payments, may be charged a penalty. Although special estimated tax rules apply to fishermen, they are not categorically exempt from these rules (Publication 505, Tax Withholding and Estimated Tax).

The Congress added Section 3121(b)(20) to the Code by the Tax Reform Act of 1976 (the "Act"), H.R. 10612, 94th Cong. P.L. 94-455 (December 29, 1976). The legislative history for the Act indicates that in enacting an exception from employment for certain fishermen the Congress was concerned about placing an undue burden on small business owners operating fishing boats (S. REP. 94-938 94TH CONG., 2D SESS. P. 97 (JUNE 10, 1976)). Because the crews may include individuals who may work for only a few voyages and sometimes even only one voyage, and could be selected from individuals waiting around the docks, the Congress thought it was difficult and impractical for a boat operator to keep the necessary records to calculate his tax obligations as an employer, and equally difficult for him or her to withhold the appropriate tax payment.

Also, since the boats operate with small crews and sometimes the operator of the boat has worked as a fisherman all his life, the Congress believed the operator may be unaccustomed to keeping records of any type, but especially the type required under the tax rules for employers. The Congress also noted that some fishermen are not actually paid a regular salary but receive portions of the catches.

Thus, in light of the basic informality of the arrangement and difficulty in adhering to the obligations required of an employer, the Congress felt it was appropriate to remove the withholding obligations from certain small boat operations by treating the fishermen as self-employed individuals.

I hope this information is helpful. If you have any additional questions, please call me or  
at .

Sincerely,

Paul J. Carlino  
Chief, Employment Tax Branch 1  
Office of the Division Counsel/Associate Chief  
Counsel  
(Tax Exempt & Government Entities)