

ID: CCA\_2020112709582040

UILC: 7873.00-00

Number: **202053014**

Release Date: 12/31/2020

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**From:** [REDACTED]

**Sent:** Friday, November 27, 2020 9:58:20 AM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** Assistance request on the application of sec 7873 to Seafood Trade Relief Program (POSTU-123809-20)

Hi

You have asked for CC:EEE:EOET:ET's assistance on whether members of a federally recognized Indian tribe who are excluding income from fishing rights-related activity under section 7873 of the Internal Revenue Code (Code) may also exclude payments received under the Seafood Trade Relief Program (STRP). The STRP is administered by the United States Department of Agriculture and provides payments to eligible commercial fisherman of seafood commodities that have been impacted by trade actions of foreign governments resulting in the loss of exports ("retaliatory tariffs").

Section 7873 of the Code provides rules governing the federal tax treatment of income derived by Indians from the exercise of fishing rights secured by treaty. The general rule of section 7873(a)(1) provides that no income tax shall be imposed on income derived by a member of an Indian tribe directly or through a qualified Indian entity, or by a qualified Indian entity, from a fishing rights-related activity of such tribe. The general rule of section 7873(a)(2) provides that no employment taxes shall be imposed on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

"Fishing rights-related activity" is defined by section 7873(b)(1), with respect to any Indian tribe, as any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish, but only if substantially all of such harvesting was performed by members of the tribe.

"Recognized fishing rights" is defined by section 7873(b)(2), with respect to an Indian tribe, as fishing rights secured as of March 17, 1988, by a treaty between the tribe and the United States or by an Executive order or an Act of Congress.

"Qualified Indian entity" is defined by section 7873(b)(3)(A) to mean, with respect to an Indian tribe, any entity if (1) the entity is engaged in a fishing rights-related activity of the tribe, (2) all of the equity interests in the entity are owned by qualified Indian tribes,

members of such tribes, or their spouses, (3) except as provided in regulations, in the case of an entity that engages in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and (4) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

The legislative history of section 7873 provides additional guidance on the term “fishing rights-related activity.” Specifically, the Senate report states, “[t]he term “fishing rights-related activity” is defined to include any activity directly related to harvesting (including aquaculture), processing, or transporting fish harvested in the exercise of fishing rights guaranteed by treaty, Federal statute, or executive order, or the selling of such fish, provided that substantially all of the harvesting of such fish was performed by members of the tribe granted such fishing rights. S. Rep. No. 445, 100<sup>th</sup> Cong., 2d Sess. 474 (1988). The House report further provides, “[i]t is the intent of the Committee that this legislation be read broadly to clarify the tax exempt status of all fishing activities, regardless of whether they are protected by treaty, executive order, or statute. H. Rep. No. 312 (part 2), 100<sup>th</sup> Cong., 2d Sess. 7 (1988).

We believe the STRP payments received by the tribal fisherman are income derived from a fishing rights-related activity of the tribe, as described in section 7873(a). The STRP payments to commercial fisherman are intended to offset the loss of income from fish exports due to retaliatory tariffs imposed by foreign governments. The STRP payments are not available to anyone affected by retaliatory tariffs in general, they are offered only to commercial fisherman who have lost income on the export of particular fish, and the payments are calculated based on the expected trade damage for each affected species of fish. In effect, the payments are substitutes for income lost on the harvesting, processing, and transporting fish subject due to the tariffs. If the income being replaced by the STRP payments is “income derived from a fishing rights-related activity of the tribe,” then the STRP payments received by a tribal member or qualified Indian entity (as described in section 7873(b)(3)) will also meet the requirements for exclusion under section 7873.

Please let us know if you have any questions or would like to discuss.