



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

OFFICE OF THE CHIEF COUNSEL

May 11, 2021

Number: **2021-0015**
Release Date: 9/24/2021

CONEX-107576-21

UIL: 7873.00-00

The Honorable Susan Collins
United States Senator
202 Harlow Street, Suite 20100
Bangor, ME 04401

Attention:

Dear Senator Collins:

I am responding to your inquiry dated March 19, 2021. You asked if payments made to tribes or tribal members pursuant to Section 12005 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Section 12005 payments) are exempt from tax under Section 7873 of the Internal Revenue Code (Code).

Section 12005 of the CARES Act authorizes the Secretary of Commerce to assist tribal, subsistence, commercial, and charter "fishery participants" who have been adversely affected by the novel coronavirus (COVID-19). Fishery participants are "tribes, persons, fishing communities, aquaculture businesses not otherwise eligible for assistance under part 1416 of title 7 of the Code of Federal Regulations for losses related to COVID-19, processors, or other fishery-related businesses, who have incurred, as a direct or indirect result of the coronavirus pandemic (1) economic revenue losses greater than 35 percent as compared to the prior 5-year average revenue; or (2) any negative impacts to subsistence, cultural, or ceremonial fisheries."

Section 7873 of the Code governs the federal tax treatment of income derived by tribal members from the exercise of federally recognized fishing rights. Section 7873(a)(1) of the Code provides that no income and self-employment taxes 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." 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.”

To determine whether the Section 12005 payments made to tribal fishery participants are exempt from tax under Section 7873 of the Code, we look to whether a tribal fishery participant has lost income from a recognized fishing rights-related activity that would have been exempt from tax under Section 7873 of the Code. If the Section 12005 payments are intended to be a substitute for that lost income, then the Section 12005 payments are also exempt from tax under Section 7873. For example, if a tribe has recognized fishing rights to harvest, process and transport harvested fish and is unable to exercise those rights due to COVID-19, the Section 12005 payments that are intended to replace that lost income are exempt from tax under Section 7873.

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

Rachel Levy

Associate Chief Counsel
(Employee Benefits, Exempt Organizations
& Employment Taxes)