

SS-8 Determination—Determination for Public Inspection

Occupation

09CME.2 Crew Member

Determination:

☐ Employee

☒ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

I have read Notice 441 and am requesting:

☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"

☐ Delay based on an on-going transaction

☐ 90 day delay

For IRS Use Only:

Facts of Case

Information provided indicated the firm is the captain an commercial fishing vessel in Alaska for the 2013 Salmon fishing season. The worker was hired on a crew member for the 2013 fishing season. The worker was paid a percentage of the catch for the season. The firm reported the income in Box 5 "Fishing Proceeds" on Form 1099-MISC. The worker filed the SS-8 because he felt he was an employee and not an independent contractor.

Analysis

ANALYSIS

Per IRS Guidelines

Wages paid to members of a crew on a fishing boat are not subject to federal income tax withholding, social security and Medicare taxes, and the federal unemployment tax [under IRC sections 3401(a)(17), 3121(b)(20), and 3306(c)(17) respectively], if all of the following conditions are met:

1. The members do not get and are not entitled to get any money for their work (other than as provided in condition #2 below);
2. The members get a share of the catch or a share of the proceeds from the sale of the catch;
3. Each member's share depends on the size of the catch; and,
4. The operating crew of the boat (or each boat from which a member gets a share for a fishing operation involving more than one boat) is normally fewer than ten persons (determined on the basis of the average size of the crew during the preceding four calendar quarters).

Effective January 1, 1994, under limited circumstances, the crewmembers can receive cash pay of not more than \$100 per trip. This would also apply to the period 1985-1994, unless the remuneration had been treated as wages when paid.

The earnings of these crewmembers are considered trade or business income. Gross income from fishing includes amounts received from the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish (for example, lobsters, crabs, and shrimp), sponges, seaweed, or other aquatic forms of animal and vegetable life.

Services performed in catching fish are exempt from federal unemployment taxes, except the operator of the boat may be subject to this tax on the earnings of crewmembers that perform services that come under the following exceptions:

1. Work related to catching salmon or halibut for commercial purposes; or,
2. Work performed on/in connection with a vessel of more than ten net tons.

Work that is not exempt under this rule may qualify as exempt if the four conditions discussed previously are met.

If any of the crewmembers work as self-employed individuals under the above provisions, the operator of a boat must file a completed Form 1099-MISC with the IRS and the crewmembers. The \$600 or more rule does not apply.

If the above provisions were not met, a worker would be considered an employee. Compensation to an individual classified as an employee is subject to federal income tax withholding, Federal Insurance Contributions Act tax (FICA), and Federal Unemployment Tax Act (FUTA) as provided by sections 3101, 3111, 3301 and 3401 of the Internal Revenue Code, and it is possible you could be liable for same.

The employment tax liabilities for income tax withholding and FICA also apply to resident and non-resident aliens, except that non-resident aliens may have an exception depending on their immigrant status. FUTA may also apply to the income earned by aliens, even when the income is not subject to FICA tax. If your worker is a resident or non-resident alien, and you need additional information, you may wish to obtain Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

CONCLUSION

Based on the information provided by both parties, I find the proceeds earned by the worker to have been correctly reported on Form 1099-MISC according to the IRS Guidelines for commercial fishing purposes.