

Fishing Information Newsletter

News You Can Use from the Internal Revenue Service

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Message from the Coordinator

The Market Segment Specialization Program (MSSP) focuses on developing highly trained examiners for a particular market segment. The commercial fishing industry is one such market segment the Internal Revenue Service has studied in order to increase the efficiency and effectiveness of our examinations. An integral part of our MSSP approach is to develop and publish an Audit Techniques Guide unique to the industry. At present, there exists two Audit Technique Guides specific to the commercial fishing industry - [Alaskan Commercial Fishing: Part I - Catcher Vessels](#) - (7/95 280K) which is specifically structured around the Alaskan industry but may be used as an outline for commercial fishing industry in other regions and [Alaskan Commercial Fishing: Part II - Processors & Brokers](#) - (7/95 229K) which concentrates on issues to be considered during audit of fish processing plants; larger, vertically integrated organizations; fish brokers; and capital asset transactions and foreign related party transactions.

Even though these audit guides were produced in 1995, the content remains technically correct. A major revision, however, is planned for both of these audit guides that will expand on several of the topic areas such as the Capital Construction Fund, tax home and self-employment tax issues, and will cover topics and issues beyond the Alaskan commercial fishing industry.

All of our Audit Technique Guides are available online through www.irs.gov, Tax Information for Businesses – Market Segment Specialization Program.

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Tax Home

To best illustrate the concept of tax home, let's look at two scenarios:

Scenario A – Fishing is the sole or major source of income for the taxpayer:

A taxpayer's "tax home" is the taxpayer's principal or regular post of employment during the taxable year regardless of the physical location of his or her residence. A fisher's principal or regular post of employment may be regarded as being aboard the fishing vessel or at the port where voyages are ordinarily begun and ended, depending on the volume of business activity conducted on the vessel as compared to at the port. Thus, the "tax home" of a fisher may be the vessel itself or the home port of the fishing vessel. A taxpayer cannot deduct the cost of personal meals and lodging while performing duties at his or her principal or regular place of business, even though the taxpayer maintains a permanent residence elsewhere. Thus, meals and lodging cost while on the vessel or at the home port, if either is the tax home, are not deductible.

The importance of determining the location of a fisher's principal or regular post of employment (tax home) is evident not only because the fisher cannot deduct the cost of his or her meals and lodging while there, but also because that location must serve as the point of origin for computing his or her traveling expenses incurred while "away from home."

In Rev. Rul. 55-235 it was held that the tax home of a commercial fisherman is his home port where a large portion of his commercial activities (i.e. selling fish) took place. However, a fisherman's vessel will be considered his tax home in situations where he sells most of his catch at points other than his home port. Rev Rul 67-483 supports this conclusion.

As previously reflected by the general rule, if a fisher does not maintain a personal residence at the same location as the home port of the fishing vessel, travel expense from a fisher's personal residence to the home port of the fishing vessel are commuting expenses which are not deductible under IRC section 162(a)(2). The Tax Court held in *Tucker v. Commissioner*, 55 T.C. 783 (1971) [CCH Dec. 30,657], that “* * * if a taxpayer chooses for personal reasons to maintain a family residence far from his personal place of employment, then his additional traveling and living expenses are incurred as a result of that personal choice and are therefore not deductible.”

Scenario B - Fishing is not the major source of income for the taxpayer:

A taxpayer's “tax home” is located at the place where the taxpayer conducts his or her trade or business. If engaged at two or more separate localities, the “tax home” is located at the principal or regular post of duty during the taxable year. If the taxpayer otherwise maintains a “tax home” at a principal place of business, and regularly returns to a seasonal post of duty (fishing), the latter may qualify as a “minor” or secondary place of business, thereby entitling the taxpayer to deduct living expenses attributable to working at that location.

Which of the taxpayer's business locations is “major” and which is “minor” is determined on the basis of total time spent at each location, the degree of business activity in each, and the relative financial return from each area. A seasonal post will not take the taxpayer “away from home” for purposes of deducting travel and living expenses if the seasonal position constitutes the taxpayer's “tax home” by reason of being the sole or major business post.

Where a taxpayer has a principal place of employment in one location and a secondary business at another location, his or her presence at the second location is regarded as “away from home,” if it would be

unreasonable to expect the taxpayer to move the family to the second location.

In summary, the fishers of Scenario B can deduct meals and lodging while at their seasonal or secondary business location if indeed fishing is not their major source of income, time, and business activity. Crew members and boat owner/operators, alike, are subject to these rules.

Frequently Asked Questions ~ FAQs

Q *I am a crewman on a trawling boat with a crew size of 35-50. I get paid a crewshare based on the catch. I get a Form W-2 from the company as a wage earner and they deduct a pro-rata share of bait, fuel, supplies and \$20 per day for food provided. Should I deduct these expenses on Schedule A as employee business expenses or Schedule C showing no income and all boat expenses?*

A Since the crew size is more than 10, you are correctly categorized as an employee and should receive a Form W-2. Any expenses incurred by you should be deducted on Schedule A as employee business expense and be subject to the 2% AGI limitation. If your meals are included on your Form W-2, they would not be subject to the 50% meals-limited deduction.

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