Fishing Information Newsletter

News You Can Use from the Internal Revenue Service

Volume 2, Issue 7 **Circulation 240** **July 2000**

Message from the Coordinator

Many commercial fishermen are not aware that there are special rules relating to when they must pay estimated tax and when they should file their tax returns to avoid an estimated tax penalty. If at least two-thirds of your gross income for 1999 or 2000 is from fishing, for your 2000 tax, you may choose either of the following options: (1) Pay all of your estimated tax by January 16, 2001, and file your *Form 1040* by April 16, 2001, or (2) File your *Form 1040* by March 1, 2001, and pay all the tax due. You will effectively avoid an estimated tax penalty if you exercise either of these options. When you file your return, it is important to attach Form 2210-F, *Underpayment of Estimated Tax by Farmers and Fishermen.*

It has been brought to my attention that some commercial fishermen who filed their 1999 returns and paid their entire tax liability prior to March 1, 2000 to avoid the estimated tax penalty still received penalty notices from the Service Centers. This occasionally will happen. If you received a penalty notice for underpaying estimated tax that you think is wrong, it is important that you immediately write to the address on the notice and explain why you think the notice is in error. Do not ignore a penalty notice even if you think it was sent to you by mistake. If some of you paid the penalty without questioning the notice and now feel you did not owe it, you can file Form 843 requesting the penalty amount be refunded to you.

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Please send us your topic ideas and questions….

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Gross income from fishing includes amounts you receive from catching, taking, harvesting, cultivating, or farming any of the following aquatic resources:

- Fish
- Shellfish (such as clams and mussels)
- Crustacea (such as lobsters, crabs and shrimp
- Sponge
- Seaweed
- Other aquatic forms of animal or vegetable life

Depreciation/Amortization

Are the capitalized costs of limited entry fishing permits eligible for an amortization deduction under the Revenue Reconciliation Act of 1993?

The Revenue Reconciliation Act of 1993 (P.L. 103-66) added section 197, which allows an amortization deduction with respect to the capitalized costs of certain intangible property that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over a 15-year period that begins with the month that the intangible is acquired.

The term "section 197 intangible" is defined to include "any license, permit, or other right granted by a governmental unit or any agency or instrumentality thereof." Thus, for example, the capitalized cost of acquiring from any person a liquor license, a regulated airline route, or a television or radio broadcasting license is to be amortized over a 15-year period. Consequently, the definition of an amortizable intangible can be interpreted to include a limited entry fishing permit.

This provision generally applies to property acquired after the date of enactment of the 1993 bill. However, a taxpayer may elect to apply the bill to all property acquired after July 25, 1991. "Anti-churning" rules prevent taxpayers from converting an existing IRC section 197 intangible for which depreciation or amortization would not have been allowable under present law into amortizable property to which the bill applies.

What is the Depreciable Life of a Fishing Vessel?

Water transportation equipment such as barges, tugs, and similar water transportation equipment have a class life of 18 years and a MACRS recovery period of 10 years. Fish tender vessels and fish processing vessels are considered water transportation equipment and should also be depreciated over a period of 10 years. Fishing boats, however, used in one's fishing trade or business is generally depreciated over 7 years.

You can generally depreciate a net, pot, or trap in your fishing trade or business as 7-year property. However, if based on your own experience, you determine that any of these items will not be used for more than one year in your business, you may be able to deduct the cost as a business expense.

Frequently Asked Questions ~ FAQs

Does the exchange of a limited entry fishing permit for another permit qualify as a like-kind exchange pursuant to IRC section 1031?

The exchange of a limited entry fishing permit for another permit qualifies for nontaxable exchange treatment under IRC section 1031, regardless of whether the permit is for a different fishery, a different species of fish, or a different type of fishing gear.

The United States District Court of the District of Alaska ruled in March of 1992, that a limited entry permit is property or rights to property within the meaning of 26 U.S.C. section 632. Lorentzen v. United States, Case No. A90-446 Civil. A limited entry fishing permit is a "use privilege" per Alaska Statute 16.43.150(e) and is to be treated as ordinary personal property for the purposes of inheritance. Wik v. Wik, 681 P.2d 336 (Alaska 1984). Permits are freely transferable.

IRC section 1031(a) provides that no gain or loss is recognized when property held for productive use in a trade or business, or for investment, is exchanged solely for property of a "like kind" that is also to be held either for the productive use in a trade or business or for investment. "Like kind" refers to the nature and character of the property and not to its grade or quality. The distinction is a broad one between classes and characters of property. The property need not be identical. When one limited entry permit is exchanged for another, both are considered personal property and the nature of the rights under the permits are the same. Pursuant to Treas. Reg. section 1.1031(a)-2(c)(1), an exchange of non-depreciable personal property qualifies for non-recognition of gain or loss under IRC section 1031 if the exchanged properties are of a like kind.

Please also refer to the May 2000 issue of the *Fishing Information Newsletter* (FIN) for more information on like-kind exchanges

Need Back Issues?

Back issues of the FIN are available. Please feel free to request them by Month or Volume Number through any of the FIN e-mail addresses shown below.

Correction..... In last month's issue , the article on "Tax Home" referred to Rev. Rul 67-483. It should have read Rev. Rul 67-438. I apologize to those who could not find the proper reference.

Remember - Don't Be "Selfish"

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IRS
Department of the Treasury
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www.irs.gov
Publication **3432 (04/00)**
Catalog Number **26188F**