

# Fishing Information Newsletter

*News You Can Use from the Internal Revenue Service*

Volume 3, Issue 02

Circulation 431

February 2001

## Message from the Coordinator

### Important Dates to Remember:

**January 31, 2001** – By this date **Fishing boat operators** must have given a 2000 Form 1099-MISC, *Miscellaneous Income*, to certain crew members who were self-employed. If you have not issued Forms 1099 by that date, please provide the Form 1099-MISC to your crew member as soon as possible.

**February 28, 2001** – By this date **Fishing boat operators** must send Copy A of Forms 1099-MISC to the IRS using Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*.

**March 1, 2001** – For **Fishermen**, if at least two-thirds of your gross income for either 1999 or 2000 was from fishing, you can file your 2000 Form 1040 by this date and pay your tax in full without penalty (estimated tax penalty). When you file your return, remember to attach Form 2210-F, *Underpayment of Estimated Tax by Farmers and Fishermen*.

If you file your 2000 return and pay your entire tax liability prior to March 1, 2000, but still receive an estimated tax penalty notice from the Service Center, it is important that you immediately write to the address on the notice and explain why you think the notice was in error. Do not ignore a penalty notice even if you think it was sent to you by mistake.

If you received an estimated tax penalty notice in the past and paid the penalty without questioning it, but now feel you did not owe any penalty, you can file Form 843 requesting the penalty amount be refunded to you.

Mark Primoli  
National Commercial Fishing Coordinator

*Please send us your topic ideas and questions....*

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## Transfer of Limited Entry Permits

The following question was submitted by one of our readers:

*As fishermen get older, it is common for them to sell or transfer their permit to a sibling or non-spouse relative. If these were originally pre-91 permits, would they then qualify for amortization after such a transfer? Would there be any affect on amortization if the sale of the permit was on an installment agreement as opposed to a cash sale?*

The method of sale (cash versus installment sale) has no affect on the amortization of the permit.

If after August 10, 1993 (or after July 25, 1991, if a valid election is made), a taxpayer acquires a permit from a person that he is considered to be related to under IRC section 267(c)(4), and this related person held or used the permit at any time during the transition period, then the taxpayer will not be eligible to amortize the permit. If the related person did not hold or use the permit at any time during the transition period, amortization will be allowable.

Also, if the taxpayer acquires the permit from a family member who is other than a brother, sister, spouse, parent/grandparent (etc.), and child/grandchild/etc., the permit will be amortiz-

able. However, the anti-abuse rules will operate to disallow amortization in a situation where person #1 transfers a permit to person #2, a family member who is not considered to be related to person #1 under IRC section 267(c)(4), such as a cousin, niece, or nephew. This "unrelated" person #2 then transfers the permit to person #3, someone who is a related person, under the IRC section 267(c)(4) definition, to person #1. If the purpose of this intermediary transfer to person #2 is to achieve a tax result that is inconsistent with the purposes of section 197 (such as making the permit amortizable to person #3 when it wouldn't have been amortizable if transferred directly from person #1 to person #3), the Commissioner can recast the transaction for Federal tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 197. See Temporary Treasury Regulation 1.197-2 (h), IRC section 267(b) and IRC section 267(c)(4).

### Another Question....

*Assume one spouse, by death or disability, transfers a post-91 limited entry permit to the other spouse. The same basis for that permit will transfer with it to the new fishing spouse. Will annual amortization remain as it was, or does the transfer create a new start for the 15-year amortization period using the transferred basis?*

The answer depends upon whether the permit is transferred between spouses due to death or for any other reason. If it is transferred for any reason other than death, annual amortization remains as it was.

For example, if for disability reasons a husband, who is the sole owner of the permit (no joint ownership with the wife), transfers the permit (\$150,000 cost) to his spouse on May 19, 2000 (instead of selling it to a third party on October 1, 2000). The husband will be entitled to 4 months of amortization on his 2000 tax year Schedule C, or \$3,333 ( $\$150,000/15 \text{ years} = \$10,000/\text{year} \times 4/12 \text{ year} = \$3,333$ ).

If the wife uses the permit in her fishing business, it will be amortizable to her also. In the 2000 tax year, if her fishing business originates on or before May 19, 2000, she will be entitled to \$6,667 of amortization on her Schedule C ( $\$150,000/15 \text{ years} = \$10,000/\text{year} \times 8/12 \text{ year} = \$6,667$ ). As of January

1, 2001, the wife has 9 1/2 years left to amortize the permit. The amortization will be \$10,000/year for the 2001 through 2009 tax years. Tax year 2010 is the last year in the 15 year amortization period, and \$5,000 will be allowed in this year as only a half year of amortization is left for this year. Remember that in the initial year, 1995, the husband was only allowed 6 months of amortization.

### Transfer due to death...

If the transfer of property is due to death of the husband, generally IRC section 1014 is applicable. IRC section 1014 is entitled "Basis of property acquired from a decedent". The section lists 10 different types of situations in which property is determined to be acquired from or to have passed from the decedent. The most common is property acquired by bequest, devise, inheritance, or by the decedent's estate from the decedent, or property acquired from a decedent by reason of death, form of ownership, or other conditions, if by reason thereof the property is required to be included in determining the value of the decedent's gross estate. Under section 1014, the basis of property acquired from a decedent is the fair market value of the property at the date of the decedent's death or the fair market value of the property on any available alternative valuation date, if elected by the decedent's estate.

If the spouse uses the permit in her Schedule C fishing business she will be entitled to amortize the permit's fair market value over 15 years under section 197 of the Code. You may recall from the prior discussion that the anti-churning rules would not allow a taxpayer to amortize a permit that was acquired from their spouse if the permit was unamortizable in the spouse's hands. Even though a spouse is considered to be a related person under IRC section 267(c)(4), and normally a taxpayer wouldn't be entitled to amortize the permit if transferred from their spouse, IRC section 197(f)(9)(D) states that the anti-churning rules do not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined by IRC section 1014(a). Due to IRC section 197(f)(9)(D), the spouse is able to amortize the permit.

This answer assumed that the husband was the sole owner of the permit. If both spouses owned the

permit, then only 1/2 of the permit will receive a fair market value with a new 15-year amortization period. This is the half that section 1014(a) applies to and is portion the wife acquired from the husband after his death. The other half will continue to be amortized with the original basis and the remaining number of years as it remains the wife's portion of the asset.

*(This question was answered by Joan Olmstead Associate Technical Coordinator, Anchorage, Alaska)*

## **Your are considered a self-employed fisherman if.....**

Certain fishermen who work on a fishing boat are considered to be self-employed for purposes of employment and self-employment taxes. A fisherman is considered self-employed if he meets **all** of the following conditions:

1. He receives a share of the catch or a share of the proceeds from the sale of the catch.
2. His share depends on the amount of the catch.
3. He receives his share from a boat (or from each boat in the case of a fishing operation involving more than one boat) with an operating crew that is normally made up of fewer than 10 individuals. This requirement is considered to be met if the average number of crew members on trips the boat made during the last 4 calendar quarters was less than 10.
4. He does not get any money for his work (other than his share of the catch or of the proceeds form the sale of the catch), unless the pay meets all of the following conditions.
  - a) He does not get more than \$100 per trip
  - b) He is paid only if there is some minimum catch.
  - c) He is paid solely for additional duties (such as for services performed as mate, engineer, or cook) for which additional cash payments are traditional in the fishing industry.

## **Tax Assistance Hotline, Forms Hotline, Fax on Demand and Teletax**

### **Taxpayer Assistance**

Phone Numbers:

(800) 829-1040

Seven days a week, 24 hours a day

(800) 829-4059 TTY/TDD (Hearing Impaired)

Seven days a week, 24 hours a day

Call with general tax questions.

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IRS

Department of the Treasury

**Internal Revenue Service**

Publication **3432 (02/01)**

Catalog Number **26188F**

[www.irs.gov](http://www.irs.gov)