

Fishing Information Newsletter

News You Can Use from the Internal Revenue Service

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Message from the Editor

The September Fishing Information Newsletter (FIN) continues our series of articles on collection issues with an article on installment agreement procedures. Thanks to a question submitted by a FIN subscriber, we are happy to provide an article that addresses the tax issues that must be considered when employing a foreign crewmember.

In the past we have solicited your questions and suggestions in various ways.

In the November 1999 FIN we said: "Please remember the success of this newsletter depends on the responses, questions and concerns of the industry. Remember — don't be selfish — share our e-mail!"

The March 2000 solicitation was one of my favorites. We reminded you of an ancient Chinese proverb: "He who asks a question is a fool for five minutes; he who does not ask a question remains a fool forever." The point being that the only dumb question is one that is never asked.

In the April 2000 FIN we reminded you that "your feedback is the 'heart' of this newsletter. Remember, it's your publication, with the news you can use!"

In the October 2000 and later FIN editions we stated: "The content of this newsletter is largely dependent upon your questions. Please send us your topic ideas and questions and we will make certain they are addressed in future issues."

No matter how we say it, we are here to provide YOU with the help and information that YOU need. We enjoy hearing from you and are eager to answer your questions and write articles on your topic suggestions. As always, we can be reached by the various methods below.

Joan Olmstead
Editor, Fishing Information Newsletter

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

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Installment Agreements — Your Rights & the Procedures Explained

Installment agreements allow the full payment of your debt in smaller, more manageable amounts. Installment agreements generally require equal monthly payments. The amount of your installment payment will be based on the amount you owe and your ability to pay that amount within the time available to the IRS to collect the tax debt from you. An installment agreement is a reasonable payment option for some taxpayers.

You should be aware, however, that an installment agreement is more costly to you than paying all the taxes you owe now and may be more costly than borrowing funds to pay the amount you owe. Why? Because the IRS charges interest and penalties on the tax you owe, and charges interest on the unpaid penalties and interest that have been charged to your tax account. So, while you are making payments on your tax debt through an installment agreement, IRS continues to charge interest and penalties on the unpaid portion of that debt. The interest rate on a bank loan or cash advance on your credit card *may* be lower than the combination of penalties and interest that IRS charges.

You should also know about another cost associated with an installment agreement: To set up your installment agreement, we will charge you a \$43 user fee.

If you would like to pay off your tax debt through an installment agreement and...

- 1) **You owe \$10,000 or less in tax**, just call the number on your bill to set up your plan now. We'll tell you what you have to do to begin today.
- 2) **You owe more than \$10,000 in tax**, we may still be able to set up an installment agreement for you, but you will have to fill out a *Collection Information Statement*.

Even though you agree to an installment agreement, we may still file a *Notice of Federal Tax Lien* to secure the government's interest until you make a final payment. (See the discussion of Liens in the July 2001 edition of the FIN.) However, we cannot levy against your property while your request for an installment agreement is being considered, while your agreement is in effect, for 30 days after your request for an agreement has been rejected, or for any period while an appeal of the rejection is being evaluated by the IRS.

If you do arrange for an installment agreement, you can pay with personal or business checks, money orders, or certified funds; payroll deductions that your employer takes from your salary and regularly sends to the IRS; or electronic transfers from your bank account or other similar means.

By approving your request, we agree to let you pay the tax you owe in monthly installments instead of immediately paying the amount in full. In return, you agree to make your monthly payments on time. **If you cannot, tell us immediately.** You also agree to meet all your future tax liabilities. This means that you must have enough withholding or estimated tax payments so that your tax liability for future years is paid in full when you timely file your return.

Your agreement is based on your financial situation. If a change in your financial situation makes it necessary to change your agreement, we will send you a letter 30 days before we change your plan.

Foreign Crewmembers – Tax Issues

*By Catherine Jarvis, Revenue Agent
Anchorage, Alaska*

Q. Are there special federal tax procedures that must be followed when a nonresident alien is hired as a crewmember on board a fishing vessel?

A. Individuals who are temporarily in the United States to serve as crewmembers aboard fishing vessels often have unique and valuable skills. And, provided they have the necessary INS clearance to work in the United States, are welcome additions! Vessel operators, however, must be aware of the federal income tax complexities that may accompany the hiring of “nonresident aliens”.

A brief article in this newsletter cannot do justice to this topic. Therefore, those who are faced with this little known area of the tax law should study Publications 519 – *U.S. Tax Guide for Aliens*, 901 – *U.S. Tax Treaties*, and 515 – *Withholding of Tax on Nonresident Aliens and Foreign Corporations*. The publication on tax treaties is especially important because, although there are general rules when dealing with nonresident alien workers, the treaties can provide very different rules and can override the Internal Revenue Code!

Generally, crewmembers aboard fishing vessels with crews of less than ten are not subject to employment tax or income tax withholding provisions because they are considered to be self-employed instead of employees. Vessel operators are instead required to issue Forms 1099-MISC reporting crew shares. However, the rules are different for nonresident alien crewmembers. The February 2001 FIN article entitled “You are Considered a Self-Employed Fisherman if...” contains the complete requirements for treating crew members as self-employed.

Who is considered a nonresident alien? Explaining who qualifies as a “resident alien” is the easier approach. A resident alien is subject to the same tax law as any U.S. citizen. An individual who has a “green card” is automatically treated as a resident. An individual who is physically present in the U.S. at least 31 days in the current calendar year and 183 days or more during the current and two preceding years is also considered a resident. The 183 days is computed by adding 100% of the days in the current

year, one-third of the days in the first preceding year and one-sixth of the days in the second preceding year. (Caution: Special rules apply to students!)

If under the general rules or a treaty provision a person is not a resident, then the nonresident alien rules apply. Any individual working in the U.S., including coastal waters, must provide a Taxpayer Identification Number (TIN). There is no exception for foreign workers, but the form the vessel operator uses to secure the TIN from a nonemployee foreign worker is either a Form 8233 or Form W-8ECI (distinctions discussed below).

Once a prospective nonresident crewmember has provided a TIN, the next important question is: Where will the vessel be operating? If the individual will be performing services only when the vessel is operating outside the territorial waters of the U.S., then the foreign worker has not earned "U.S. source income". Therefore, the compensation is not subject to income tax withholding.

However, if the individual performs services within territorial waters and is a nonemployee, the compensation paid the individual may be subject to a withholding rate of 30% of the gross amount paid. IRC Section 1441 requires such withholding. The vessel operator paying the compensation deposits the 30% withholding on a monthly basis in a federal depository using Form 8109, "Federal Tax Deposit Coupon". And, not later than March 15 of the year following the tax period during which the compensation was paid, the payer must file a Form 1042 with the Philadelphia Service Center. Plus, the payer must issue a Form 1042S to the nonresident crewmember listing the compensation paid and the withholding amount, if any. If the crewmember believes the withholding has been excessive, the crewmember must file a Form 1040NR to request a refund.

Is the 30% withholding always necessary? No, a tax treaty provision may either reduce the percent withheld or eliminate the withholding. For example, income a resident of Russia receives for performing personal services as a self-employed individual in the U.S. is exempt from U.S. income tax if: 1) the individual is in the U.S. for not more than 183 days in the calendar year, or 2) the income is not attributable to a "fixed base" in the U.S. which is regularly available to the individual.

If a nonresident crewmember is relying on a treaty provision in order to be exempted from income tax withholding, then that person must present a Form 8233, "Exemption from Withholding," to the vessel operator. The form requires citation of the treaty provision being relied upon by the crewmember.

The complete text of all tax treaties signed by the U.S. may be found at the following Internet address: http://www.irs.gov/prod/ind_info/treaties.html

Another situation, which avoids the 30% withholding, is when the nonresident alien treats the nonemployee compensation as "effectively connected" with a trade or business in the U.S. (a.k.a. "ECI"). In such cases, the nonresident presents a Form W-8ECI to the payer. And, the nonresident must report such earnings on a Form 1040NR filed with the Philadelphia Service Center. ECI is subject to the same graduated tax rates as applies to U.S. citizens and residents.

Generally, compensation from personal services performed by a nonresident alien is given ECI treatment only when subject to withholding tax under IRC Section 3402 (i.e., there is an employer-employee relationship). Such would not be the case for crewmembers on vessels with crews of less than ten that meet all of the criteria contained in the previously mentioned February 2001 FIN article. Nonresident crewmembers that are employees of U.S. employers are subject to the same income tax and employment tax withholding requirements as U.S. citizens.

Finally, nonresident aliens receiving crew shares as self-employed crewmembers are not subject to self-employment tax. Again, crew size is the vital factor!

The ultimate responsibility for properly applying the rules relating to nonresident alien crewmembers lies with the vessel operator. Sorry to say, the payer of the crew shares may be held liable for the 30% withholding tax even when the withholding did not occur!

For further information, please read the Audit Techniques Guide, *Alaskan Commercial Fishing: Part II - Processors and Brokers*, pages 32-35, at http://www.irs.gov/prod/bus_info/mssp/index.html

Upcoming Topics

Articles on the following topics will appear in the October and November editions of the FIN:

- 1) Offers in Compromise, which will complete our series on collection issues (unless subscribers suggest other collection topics they would like addressed)
- 2) Recordkeeping Procedures and Suggestions
- 3) Net Operating Losses

Need Back Issues?

Back issues of the FIN are available. Please feel free to request them by Month/Year or Volume Number through any of the email or regular mail addresses on the first page of the FIN.

Tax Assistance Hotline, Forms Hotline, Internet Access

Taxpayer Assistance

Phone Numbers:

(800) 829-1040

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

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(800) 829-3676, seven days a week, 24 hours a day.
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IRS Internet Access

World Wide Web: www.irs.gov

The IRS Web Home Page allows convenient access to tax information 24 hours a day. The Web Site provides tax forms with instructions, publications, the latest tax law changes, and much more information for individuals and businesses.

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