

TAX AUDIT GUIDELINES FOR INTERNAL REVENUE EXAMINERS

Internal Revenue Manual Handbook No. 4231 Section 533

Indian Fishing Rights-- IRC Section 7873

(1) Section 3041 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) added Internal Revenue Code Section 7873, Income Derived by **Indians** from Exercise of **Fishing** Rights. This section exempts from federal taxation (i.e., income, employment, and self-employment) any income derived by a member of an **Indian** tribe or a qualified **Indian** entity from a **fishing** rights-related activity of that member's or entity's tribe. The **fishing** rights must be guaranteed to a tribe by a treaty, statute, or executive order secured as of March 17, 1988.

(2) When a taxpayer reports the receipt of income as excludable from gross income under IRC Section 7873, the examiner should verify the following:

(3) If excluding wages earned as an employee

(a) Proof of tribal membership verified by the tribe. This can be verified with a statement from the tribe and with the tribal membership enrollment card. This card includes the enrollment number, the signature of the authorizing official, as well as the official seal.

(b) A statement from the employer verifying that it is either an arm of the tribe or that it meets each of the requirements for qualified Indian entities per Section 7873. These requirements are:

1 It is engaged in treaty fishing rights-related activities of the employee's tribe.

2 It is 100 percent owned by one or more qualified Indian tribes or members of such tribes (or their spouses). An Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

3 Substantially all of the management functions are performed by members of qualified Indian tribes.

4 If its business is the processing or transporting of fish, at least 90 percent of its annual gross receipts is derived from the fishing rights-related activities of one or more qualified Indian tribes, each of which owns at least 10 percent of the entity. This document should also state that the employer maintains records to support these requirements.

(c) Note that the exclusion does not apply to any amounts received as an employee of a government agency such as the Department of Interior or Bureau of Indian Affairs.

(d) Verification of time allocated to fishing versus non-fishing activity. For example, consider a game warden who is responsible for protecting other wildlife and has other duties, as well as patrolling the treaty waters of his tribe. His employer should verify the percentage of time he engages in fishing rights-related activities of his tribe. The employer should also indicate that the employer is maintaining records to support the allocation.

(e) When a taxpayer meets the established criteria (i.e., proof of tribal membership, verification of employer qualified status, and verification of the allocation) and is entitled to the exclusion, the source of the employer's funding is not relevant.

(4) If excluding income from self-employment

(a) Proof of tribal membership, verified by the tribe. For fisherman, a tribal fishing license is also necessary.

(b) Evidence that income is from treaty fishing rights-related activities of that individual's tribe. For fishermen, this could be copies of fishing logs or fish tickets or other documentation indicating that the activity was conducted in that tribe's protected waters. For transporters, copies of cargo logs/tickets would be acceptable, so long as such records clearly indicate that the transported fish were harvested in the exercise of a recognized fishing right of the tribe. For sellers, copies of purchase logs and receipts are needed, so long as such records clearly indicate that the sold fish were harvested to a substantial extent, by members of the seller's tribe.

(c) A corrected Schedule C, which includes the income and expenses attributable to non-treaty activities; in other words, activities related to fish harvested outside the treaty waters of that member's tribe. (Per Internal Revenue Code Section 265, you cannot deduct expenses related to income you are excluding.)