

Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 851(c) of the Internal Revenue Code.

The public comment period for these regulations expired on October 31, 2013. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, November 8, 2013, no one has requested to speak. Therefore, the public hearing scheduled for December 9, 2013, is cancelled.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-120927-13]

RIN-1545-BL61

#### Treatment of Income From Indian Fishing Rights-Related Activity as Compensation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that would clarify that amounts paid to an Indian tribe member as remuneration for services performed in a fishing rights-related activity may be treated as compensation for purposes of applying the limits on qualified plan benefits and contributions. These regulations would affect sponsors of, and participants in, employee benefit plans of Indian tribal governments.

**DATES:** Comments and requests for a public hearing must be received by February 13, 2014.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-120927-13), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-120927-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at

[www.regulations.gov](http://www.regulations.gov) (IRS REG-120927-13).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Sarah Bolen or Pamela Kinard at (202) 622-6060 or (202) 317-6700; concerning the submission of comments or to request a public hearing, Oluwafunmilayo Taylor, (202) 622-7180 or (202) 317-6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

Indian tribal governments (ITGs) and individual tribe members conduct fishing activities to generate revenue, protect critical habitats, and preserve tribal customs and traditions. Various treaties, federal statutes, and Presidential executive orders reserve to Indian tribe members the right to fish for subsistence and commercial purposes both on and off reservations. Because many of the treaties, statutes, and executive orders were adopted before passage of the Federal income tax, they often do not expressly address the question of whether income derived by Indians and ITGs from protected fishing activities is exempt from taxation. See H.R. Rep. 100-1104, at p. 77 (1988).

Congress added section 7873 to the Internal Revenue Code as part of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Section 7873(a)(1) provides that no income tax shall be imposed on income derived from a fishing rights-related activity of an Indian tribe by (A) a member of the tribe directly or through a qualified Indian entity, or (B) a qualified Indian entity. Section 7873(a)(2) provides that no employment tax shall be imposed on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity. Thus, section 7873(a) exempts income derived from a fishing rights-related activity ("fishing rights-related income") from both income and employment taxes.

Section 7873(b)(1) defines fishing rights-related activity with respect to an Indian tribe as any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of the tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

Section 415(a)(1) provides that a trust that is part of a pension, profit-sharing, or stock bonus plan shall not constitute

a qualified trust under section 401(a) if (A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of section 415(b), or (B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of section 415(c).

Section 415(b)(1) provides that benefits with respect to a participant exceed the annual limitation for defined benefit plans if, when expressed as an annual benefit (within the meaning of section 415(b)(2)), the participant's annual benefit is greater than the lesser of \$160,000 (as adjusted in accordance with section 415(d)(1)) or 100 percent of the participant's average compensation for the participant's high 3 years.

Section 415(b)(3) provides that, for purposes of section 415(b)(1), a participant's high 3 years will be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1) (that is, a self-employed individual treated as an employee), the preceding sentence is applied by substituting for "compensation from the employer" the following: "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)."

Section 415(c)(1) provides that contributions and other additions with respect to a participant exceed the annual limitation for defined contribution plans if, when expressed as an annual addition (within the meaning of section 415(c)(2)) to the participant's account, the participant's annual addition is greater than the lesser of \$40,000 (as adjusted in accordance with section 415(d)(1)) or 100 percent of the participant's compensation. Section 415(c)(3) provides that the term "participant's compensation" means the compensation of the participant from the employer for the year. Section 1.415(c)-2(a) of the Income Tax Regulations generally provides that compensation from the employer within the meaning of section 415(c)(3) includes all items of remuneration described in § 1.415(c)-2(b), but excludes the items of remuneration described in § 1.415(c)-2(c).

Section 1.415(c)-2(b) generally provides that, for purposes of applying the limitations of section 415, the term compensation means remuneration for services. Specifically, under § 1.415(c)-2(b)(1), compensation includes

employee wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income. In addition, § 1.415(c)-2(b)(2) provides that in the case of an employee within the meaning of section 401(c)(1) (a self-employed employee), compensation includes the employee's earned income (as described in section 401(c)(2)) plus amounts deferred at the election of the employee that would be includible in gross income but for the rules of section 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

Section 1.415(c)-2(c) excludes certain items from the definition of compensation under section 415(c)(3). Specifically, § 1.415(c)-2(c)(1) excludes contributions (other than certain elective contributions) made by the employer to a plan of deferred compensation to the extent that the contributions are not includible in the gross income of the employee for the taxable year in which contributed. Likewise, distributions from plans (whether qualified or not) are generally not considered to be compensation for section 415 purposes. Section 1.415(c)-2(c)(2) excludes from compensation amounts realized from the exercise of nonstatutory options and amounts realized when restricted stock or other property held by an employee becomes freely transferable or is no longer subject to a substantial risk of forfeiture. Section 1.415(c)-2(c)(3) excludes from compensation amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option (as defined in § 1.421-1(b)). Finally, § 1.415(c)-2(c)(4) excludes from compensation other amounts that receive special tax benefits, such as certain premiums for group-term life insurance.

Section 1.415(c)-2(d) provides safe harbor definitions that a plan is permitted to use to define compensation in a manner that satisfies section 415(c)(3). Section 1.415(c)-2(d)(2) provides a safe harbor definition of compensation that includes only those items listed in § 1.415(c)-2(b)(1) or (b)(2) and excludes all the items listed in § 1.415(c)-2(c). Section 1.415(c)-2(d)(3) provides a separate safe harbor definition of compensation that includes wages within the meaning of section 3401(a), plus amounts that would be included in wages but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(b), 402(k), or 457(b).

### Explanation of Provisions

Because fishing rights-related income is not subject to income tax, an issue has been raised as to whether such income is included as compensation for purposes of section 415(c)(3) and § 1.415(c)-2(b). The proposed regulations would clarify that certain fishing rights-related income is included in the definition of compensation. Specifically, these regulations would provide that amounts paid to a member of an Indian tribe as remuneration for services performed in a fishing rights-related activity (as defined in section 7873(b)(1)) do not fail to be treated as compensation under § 1.415(c)-2(b)(1) and (b)(2) (and are not excluded from the definition of compensation pursuant to § 1.415(c)-2(c)(4)) merely because those amounts are not subject to income tax as a result of section 7873(a)(1). Thus, the determination of whether an amount constitutes wages, salaries, or earned income for purposes of § 1.415(c)-2(b)(1) or (b)(2) is made without regard to the exemption from taxation under section 7873(b)(1) and (b)(2). In addition, by permitting fishing rights-related income to be treated as wages, salaries, or earned income under § 1.415(c)-2(b)(1) and (b)(2), plans that accept contributions of fishing rights-related income would not be precluded from utilizing the safe harbor definitions of compensation under § 1.415(c)-2(d)(2) and (d)(3) of the regulations.

### Proposed Applicability Date

These regulations are proposed to apply for taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Taxpayers, however, may rely on these proposed regulations for periods preceding the effective date, pending the issuance of final regulations. If, and to the extent, the final regulations are more restrictive than the rules in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations do not impose a collection of

information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply and a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "ADDRESSES" heading. In addition to general comments on the proposed regulations, the IRS and the Treasury Department request comments on the taxation of qualified plan distributions that are attributable to fishing rights-related income, and the application of section 72(f)(2) (which treats certain amounts as basis for purposes of computing employee contributions if those amounts would have not been includible in income had they been paid directly to the employee). All comments are available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

### Consultation and Coordination With Indian Tribal Governments

These proposed regulations take into account comments provided through a number of general consultation sessions held with the Indian tribal community in recent years. Consistent with Executive Order 13175, the Treasury Department and the IRS expect to hold a telephone consultation on a date between November 15, 2013 and February 13, 2014. This telephone consultation session will focus principally on the contribution of section 7873 income to qualified retirement plans and the taxation of qualified plan distributions that are attributable to this income. Information relating to the consultation, including the date, time, registration requirements, and procedures for submitting written and oral comments, will be available on the IRS Web site relating to Indian tribal governments at: <http://www.irs.gov/Government-Entities/Indian-Tribal-Governments>.

**Drafting Information**

The principal author of these regulations is Sarah R. Bolen, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

**List of subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.415(c)–2 is amended by adding paragraphs (g)(9) and (h) to read as follows:

**§ 1.415(c)–2 Compensation.**

\* \* \* \* \*

(g) \* \* \*

(9) *Income derived by Indians from exercise of fishing rights.* Amounts paid to a member of an Indian tribe directly or through a qualified Indian entity (within the meaning of section 7873(b)(3)) as compensation for services performed in a fishing rights-related activity (as defined in section 7873(b)(1)) of the tribe do not fail to constitute compensation under paragraphs (b)(1) and (b)(2) of this section and are not excluded from the definition of compensation pursuant to paragraph (c)(4) of this section merely because those amounts are not subject to income or employment taxes as a result of section 7873(a)(1) and (2). Thus, the determination of whether an amount constitutes wages, salaries, or earned income for purposes of paragraph (b)(1) or (a)(2) of this section is made without regard to the exemption from taxation under section 7873(a)(1) and (2).

(h) *Effective/applicability date.* Section 1.415(c)–2(g)(9) shall apply for plan years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Heather C. Maloy,**

*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2013–27331 Filed 11–14–13; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Parts 1904 and 1952**

[Docket No. OSHA–2013–0023]

RIN 1218–AC49

**Public Meeting on the Improve Tracking of Workplace Injuries and Illnesses Proposed Rule**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of public meeting.

**SUMMARY:** OSHA invites interested parties to attend an informal public meeting on the Improve Tracking of Workplace Injuries and Illnesses proposed rule. The purpose of the public meeting is to allow interested persons to provide oral remarks regarding the proposed rule. The proposed rule is a limited rulemaking to amend OSHA's recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep.

**DATES:** The public meeting will be held on Thursday, January 9, 2014 from 9 a.m. to 4:30 p.m. at the U.S. Department of Labor in Washington, DC. The deadline to request to attend the meeting as a speaker or an observer is Friday, December 13, 2013.

**ADDRESSES:** *Requests to attend the public meeting:* Requests to attend the public meeting, identified by docket number OSHA–2013–0023, or regulatory information number (RIN) 1218–AC49, as a speaker or observer, may be made by any of the methods below.

a. *Electronically:* You may submit requests to attend the meeting electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting a comment.

b. *Fax:* If your request, including attachments, does not exceed more than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648; or

c. *Mail, hand delivery, express mail, messenger or courier service:* You may submit your request to attend the meeting, and any attachments, to the OSHA Docket Office, Docket Number OSHA–2013–0023, U.S. Department of Labor, Room N–2655, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries

(hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Public Meeting:* The public meeting will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

*Requests for special accommodations:* Submit requests for special accommodations to attend the public meeting to Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*Instructions for submitting requests to attend the public meeting:* All requests to attend the public meeting must include the docket number (Docket No. OSHA–2013–0023) or the RIN (1218–AC49) for this rulemaking. Because of security-related procedures, submissions by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

All requests to attend the meeting, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates. For further information on submitting requests to attend, plus additional information on the rulemaking process, see Public Participation in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

a. *Press inquiries:* Contact Francis (Frank) Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

b. *General and technical information:* Contact Dave Schmidt, Director, Office of Statistical Analysis, OSHA Directorate of Evaluation and Analysis, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3507, Washington, DC 20210; telephone: (202) 693–1886; email: [schmidt.dave@dol.gov](mailto:schmidt.dave@dol.gov).

c. *Copies of this Federal Register notice:* Electronic copies are available at