

Part III - Administrative, Procedural, and Miscellaneous

Announcement of rules relating to the temporary operation of ships in the domestic trade as a result of Hurricane Katrina

Notice 2005-65

As a result of the devastation caused by Hurricane Katrina, the Treasury Department and the Internal Revenue Service (IRS) understand that on September 1, 2005, the Secretary of the Department of Homeland Security waived the Merchant Marine Act of 1920 and related laws for the transportation of petroleum and refined petroleum products for the period until 12:01 a.m., September 19, 2005, and for the transportation of petroleum released from the Strategic Petroleum Reserve undertaken in response to the circumstances arising from Katrina (the waiver). As a result of these unique circumstances, Treasury and the IRS announce the following guidance with respect to the temporary operation of ships in the domestic trade pursuant to the waiver.

The IRS will not challenge a position taken by a foreign corporation, who is otherwise engaged in the international operation of ships, that the transport of petroleum pursuant to the waiver is an activity incidental to its international operation of ships under Treas. Reg. § 1.883-1(g). In addition, Treasury and the IRS consider such

activities conducted pursuant to the waiver by enterprises otherwise engaged in the operation of ships in international traffic to be ancillary activities the income from which will qualify for exemption under the shipping article of U.S. income tax treaties.

In light of these unique circumstances, and the special consideration given to foreign crew members reflected in section 861(a)(3), the IRS will not challenge a position that compensation for labor or services performed by a nonresident alien as a regular member of a crew of a foreign vessel during the use of the vessel pursuant to the waiver is income from sources without the United States.

For purposes of section 7701(b)(7), the IRS will not challenge a position taken by an individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel operating in the United States pursuant to the waiver that the individual is not present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.

In addition, for purposes of the alternative tax under subchapter R of the Internal Revenue Code, the IRS will not challenge a position that days operating in the United States pursuant to the waiver are not included in the computation of the 30-day limitation of section 1355(f)(4).

EFFECTIVE DATE

This notice is an emergency measure and relates to the specific circumstances described in the waiver. Except as otherwise provided, the rules of this notice are applicable from September 1, 2005, through September 18, 2005. With respect to the transportation of petroleum released from the Strategic Petroleum

Reserve undertaken pursuant to the waiver, the rules of this notice are applicable from September 1, 2005, through October 31, 2005.

DRAFTING INFORMATION

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