

Fishing Information Newsletter

News You Can Use from the Internal Revenue Service

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Message from the Editor

The Collection Due Process article in this edition of the Fishing Information Newsletter FIN begins our series of four planned articles on collection issues. The August/September issue will discuss the Collection Appeals Program (CAP), followed by articles on installment agreements and offers in compromise.

If there are any other collection issues you would like addressed in the FIN, please send us your suggestions/questions to one of the addresses below.

This edition also discusses the standard meal allowance, or “per diem” method of computing away-from-tax-home meals for self-employed fishers.

This is the 20th edition of the FIN since September 1999. We know it can take some time searching through prior FINs to find that one particular article you may need to reread. So, next month’s newsletter will include an index to all of the articles in the previous 20 FIN editions for your easy reference in locating articles.

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

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Collection Due Process (CDP) – Your Rights & the Procedures Explained

Collection Due Process (CDP) is available to you if you receive one of the following notices:

- 1) **Lien Notice:** Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, or
- 2) **Levy Notices:** (A) a Final Notice – Notice of Intent to Levy and Notice of Your Right to A Hearing, (B) a Notice of Jeopardy Levy and Right of Appeal, and (C) a Notice of Levy on Your State Tax Refund – Notice of Your Right to a Hearing.

You have the right to a CDP hearing by the IRS Office of Appeals for these collection actions:

- ✓ the first time a Notice of federal Tax Lien is filed on a tax period;
- ✓ before we send the first levy on your property for a tax period,
- ✓ when we levy your state refund; and
- ✓ when we issue a jeopardy levy.

You may contest the CDP decision in the Tax Court or a U.S. District Court, as appropriate.

Liens: Liens give the IRS a legal claim to your property as security or payment for your tax debt. A *Notice of Federal Tax Lien* may be filed only after:

- ✓ We assess the liability;
- ✓ We send you a *Notice and Demand for Payment* – a bill that tells you how much you owe in taxes; and
- ✓ You neglect or refuse to fully pay the debt within 10 days after we notify you about it.

Once these requirements are met, a lien is created for the amount of your tax debt. By filing this notice, your creditors are publicly notified that we have a claim against all your property, including property

you acquire after the lien was filed. The lien attaches to all your property (such as your house, car, boat) and to all your rights to property (such as your accounts receivable).

Lien Notice: The IRS is required to notify you the first time a Notice of Federal Tax Lien is filed for each tax period. We have to notify you within 5 days after the lien notice filing. You then have 30 days, after that 5-day period, to request a hearing with the Office of Appeals. The lien notice you receive will indicate the date this 30-day period expires.

Levy: A levy is a legal seizure of your property to satisfy a tax debt. Levies are different from liens. A lien is a claim *used as security* for the tax debt, while a levy actually *takes the property* to satisfy the tax debt.

If you do not pay your taxes (or make arrangements to settle your debt), the IRS may seize and sell any type of real or personal property that you own or have an interest in. For instance, we could seize and sell property that you hold (such as your car, boat, or house), or we could levy property that is yours but is held by someone else (such as your wages, retirements accounts, dividends, bank accounts, licenses, rental income, accounts receivables, the cash value of your life insurance, or commissions).

We usually levy only after these three requirements are met:

- ✓ We assessed the tax and sent you a *Notice and Demand for Payment*,
- ✓ You neglected or refused to pay the tax, and
- ✓ We sent you a *Final Notice of Intent to Levy* and a *Notice of Right to Hearing* (levy notice) at least 30 days before the levy.

Levy Notices: For each tax period, the IRS is required to notify you the first time we intend to collect a tax liability by taking your property or rights to property. We do this by sending you a levy notice. We can't levy or seize your property within 30 days from the date this notice is mailed, or given to you, or left at your home or office. During that 30-day period, you may request a hearing with the Office of Appeals.

There are two exceptions to this notice of intent to levy provision. We may issue a levy without sending this notice or waiting 30 days when collection of the tax is in jeopardy. We may also levy on your state tax refund without sending a notice or waiting 30 days. You can request a hearing after the levy action for both of these instances.

Procedures for Requesting a CDP Appeals Hearing: Complete Form 12153, *Request for a Collection Due Process Hearing*, and send it to us at the address shown on your lien or levy notice within 30 days. Check the IRS action(s) you disagree with, and explain why you disagree. If you received both a lien and a levy notice, you may appeal both actions. You must identify all of your reasons for disagreement with us at this time. You may raise issues relating to the unpaid tax, including:

- ✓ Appropriateness of collection actions
- ✓ Collection alternatives such as installment agreement, offer in compromise, posting a bond or substitution of other assets
- ✓ Appropriate spousal defenses
- ✓ The existence or amount of the tax, but only if you did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the tax liability.

You may not raise an issue that was raised and considered at a prior administrative or judicial hearing, if you participated meaningfully in the prior hearing or proceeding.

To preserve your right to go to court, you must send us the Form 12153 within 30 days. Form 12153 is available from our web site at www.irs.gov or by calling 1-800-829-3676. Include a copy of your lien and/or levy notice. List all taxes and tax periods for which you are requesting a hearing. Under CDP, you are entitled to only one hearing relating to a lien notice and one hearing relating to a levy notice, for each taxable period. If you receive a subsequent lien or levy notice after you request a hearing on an earlier notice, Appeals can consider both matters at the same time.

Before you formally appeal a lien or levy notice by sending us Form 12153, you may be able to work out a solution with the Collection function that took the action. To do so, contact the IRS employee whose

name appears on the lien or levy notice and explain why you disagree with the action. This contact, however, does NOT extend the 30-day period to make a written request for a CDP hearing.

What Happens When You Request a CDP Appeals Hearing:

After you request a hearing, you can still discuss your concerns with the office collecting the tax or filing the Notice of Federal Tax Lien. If you are able to resolve the issues with that office, you may withdraw your request for a hearing.

The Office of Appeals will contact you to schedule a hearing. Your hearing may be held either in person, by telephone, or by correspondence.

Unless we have reason to believe that collection of the tax is in jeopardy, we will stop levy action during the 30 days after the levy notice and, if your appeal is timely, during the appeal process.

Your appeal is timely if you mail your request for a hearing to the address shown on our notice on or before the 30th day after the date of the levy notice or the date shown on the lien notice. If we receive a timely filed Form 12153, we will also suspend the 10-year collection statute of limitations until the date the determination is final or you withdraw, in writing, your request for a hearing.

At the conclusion of the hearing, Appeals will issue a written determination letter. If you agree with Appeals' determination, both you and the IRS are required to live up to the terms of the determination.

If you don't agree with Appeals' determination, you may request judicial review of the determination by initiating a case in a court of proper jurisdiction (United States Tax Court or United States District Court, depending on the circumstances) on or before the 30th day after the date of Appeals' determination. Once the Court rules, its decision will be binding on both you and the IRS.

The Office of Appeals will retain jurisdiction over its determinations and how they are carried out. You may also return to Appeals if your circumstances change and impact the original determination. However, you must exhaust your administrative remedies first.

If your appeal request is not timely, you will be allowed a hearing, but there will be no statutory suspension of collection action and you cannot go to court if you disagree with Appeals' decision.

Meals – Per Diem for the Self-Employed Fisher

By George Bousseilaire, Anchorage, Alaska

As a fisher, whether a boat owner, operator, or crew-member, you may incur significant expenses for subsistence while pursuing your trade. Meals are deductible only when 1) you are away from your tax home in pursuit of your trade, **and** 2) your business trip is overnight or long enough that you need to stop for sleep or rest to properly perform your duties.

To determine your eligibility to deduct meals, you must first determine the location of your tax home. Generally, your tax home is your regular place of business or post of duty, regardless of where you maintain your family home. If you have more than one place of business, your tax home is your main place of business. The following factors are considered when determining your main place of business or work:

- ✓ The total time you ordinarily spend working in each area,
- ✓ The degree of your business activity in each area, and
- ✓ The relative amount of your income from each area.

Therefore, depending upon your particular facts, your main place of business or work (your tax home) may be a port, a vessel, or the business location of the primary business you conduct during non-fishing months (if any). See past Fishing Information Newsletters (FIN) for additional discussions on travel and tax home issues.

When meal expense is allowable, the calculation of the deductible meal expense can be made either using the actual cost method or the standard meal allowance method. The standard meal allowance method allows you to deduct a set amount instead of keeping records of your actual costs. The standard meal allowance refers to the federal rate for M&IE (meals and incidental expenses), which varies by area and

when you travel. If you use the standard meal allowance, you still must keep records to prove the time, place, and business purpose of your travel.

Note: There is no optional standard lodging amount similar to the standard meal allowance. Your allowable lodging expense deduction is your actual cost.

Standard meal allowance rates are established by area and are revised regularly to reflect adjustments in locality costs. Per diem rate information can be obtained from a variety of sources including IRS Publication 1542, *Per Diem Rates for the Continental U.S.*, on the Internet at www.policyworks.gov/perdiem, and legal or tax research services. Publication 1542 only contains the rates for the contiguous 48 states. Per diem rates for Alaska, Hawaii, and foreign locations can be obtained by clicking on these links at the above “policyworks” web site, or by going directly to www.dtic.mil/perdiem/pdrates.html.

The remainder of this article focuses on the standard meal allowance method for M&IE, which is commonly known as the “per diem” method, and the application of this method to self-employed vessel owners and operators and self-employed crew members.

Self-employed fishers are on occasion away from their tax home and are thus entitled to use the per diem method in calculating M&IE for the expenses incurred while away from their tax home. Discussed below are the two most common arrangements negotiated between vessel operators and crew members to establish who will pay for the meals.

- The vessel operator pays for the meals, but the self-employed crew members are required to share equally in the burden of the expense. Usually, the crew members’ shares will be withheld from their fishing trip settlement. In this scenario, the crew member has, in effect, incurred the expense. Therefore, self-employed crew members qualify to use the per diem method (in lieu of the actual method) to calculate their deductible expense for meals incurred while away from their tax home. Self-employed vessel operators are only eligible to deduct their own meals incurred while away from their tax home. The crew member, when preparing his/her return, must include in income the gross fishing proceeds (the gross fishing proceeds prior to reduction for

items withheld, such as meals, fuel, and bait). From the gross fishing proceeds, the allowable away-from-tax-home meals are deductible.

- The vessel operator pays for the meals without any crew reimbursement. In this scenario, crew members would NOT be entitled to any meal deduction because their meals were provided by the vessel operator. In fact, if the vessel operator provided meals to crew members while at their tax home, the value of these meals should be included in the Form 1099-MISC as additional income to the crew members. If the vessel operator is self-employed, their meal expense can be calculated by using the actual method for all (both crew members and the vessel operator) or by using the actual method for the crew members and the per diem method for the vessel operator. The vessel operator CANNOT use the per diem method to calculate the deductible meals provided to the crew members.

Reminder – After the away-from-tax-home meal expense is calculated, it must be reduced by 50 percent (50%) to arrive at the deductible meals. See past FIN articles relating to this issue. If the per diem method is used to calculate meal expense, the entire portion (M&IE) is considered food for the purposes of the 50% reduction rule.

When calculating deductible away-from-tax-home meals expense, use the per diem rate that best reflects the locality where the business trip is taking place. For example, consider the following scenario:

A fisherman lives in Bellingham, Washington. In the year 2000 he travels to Kodiak, Alaska, to work on a boat based out of the Kodiak Harbor. The Kodiak salmon season lasts two to three months. After the salmon season a one week (7 day) trip is made to the Port of Dutch Harbor, Alaska, to work as a crew member on a pollack trawl vessel. Two days are spent in travel and gear preparation and five (5) days are spent at sea. This fisherman is responsible to pay all meal costs. The general facts of this case indicate that Bellingham is the taxpayer’s personal home and Kodiak is his tax home (assuming fishing is the only business conducted by this taxpayer the entire year and these are the only fishing activities). Dutch Harbor and the time at sea are days spent on business away from the fisherman’s tax home. A deduction

for meal expense is allowable for the seven days while in Dutch Harbor. If the per diem method is used, the meal expense would be calculated as follows:

Day	Location	MI&E Rate
1	Dutch Harbor	\$ 71 (Dutch Harbor Rate)
2	Dutch Harbor	\$ 71 “
3	At sea	\$ 54 (Use Alaska – Other)
4	At sea	\$ 54 “
5	At sea	\$ 54 “
6	At sea	\$ 54 “
7	At sea	\$ 54 “
Total Meals		\$ 412
50% Reduction		\$ (206)
Tax deduction		<u>\$ 206</u>

Tax Assistance Hotline, Forms Hotline, Internet Access

Taxpayer Assistance

Phone Numbers:

(800) 829-1040

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

Tax Forms and Publications

(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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