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## Letter Ruling 84-71: Withholding for Employees of Commercial Fishing Vessels

September 10, 1984

You inquire whether employees of commercial fishing vessels are subject to Massachusetts income tax withholding.

Massachusetts General Laws Chapter 62B, Section 2 provides that every employer making payment to employees of wages subject to tax under the income tax provisions shall deduct and withhold a tax upon such wages in accordance with tables prepared by the Commissioner.

"Wages," for purposes of withholding, include wages as defined in Section 3401(a) of the Internal Revenue Code. (G.L. c. 62B, § 1).

Internal Revenue Code Section 3401(a) defines "wages" as "all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except -that such term shall not include remuneration paid ... for service described in section 3121(b)(20)." (§ 3401(a)(17)).

Code Section 3121(b)(20) describes

service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat, pursuant to which

(A) such individual does not receive any cash remuneration. (other than as provided in subparagraph (B)),

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individuals share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

Therefore, the remuneration paid for the service described in Code Section 3121(b)(20) does not constitute "wages" for purposes of Massachusetts income tax withholding.

An individual who can reasonably expect to receive income in excess of \$500 during the taxable year from sources other than wages subject to withholding, is required to file a declaration of estimated tax. (G.L. c. 62B, § 13). The declaration of estimated tax is to be filed and the estimated tax paid in equal installments as set forth, by fiscal year, in table 2 of 830 CMR 15.01.

Massachusetts law does not require the withholding of income tax from compensation paid to employees of commercial fishing vessels where the service performed and the manner of Compensation is that described in Internal Revenue Code Section 3121(b) (20). If such an employee can reasonably expect to receive income in excess of \$500 during the taxable year, he must file a declaration of and pay estimated tax for that year.

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