

Joint Committee on Taxation
June 8, 1988
JCX-8-88

Summary of H.R. 2792
(Relating to Indian Fishing Rights)
for Mark-up by the
Committee on Ways and Means

Present Law

Various treaties, Federal statutes, and executive orders reserve to Indian tribes (mostly in the West and Great Lakes regions) rights to fish for subsistence and commercial purposes both on and off reservations. Because the treaties, statutes, and executive orders were adopted before passage of the Federal income tax, they do not specifically address whether income derived by Indians from protected fishing activities is exempt from taxation.

Indians generally are subject to Federal income tax like other U.S. citizens, absent a specific Federal exemption. Consequently, the Tax Court has ruled in three cases that income derived by Indians from protected fishing activities is taxable, and the Internal Revenue Service has assessed deficiencies in other cases.

Summary of H.R. 2792
as reported by
The Subcommittee on Select Revenue Measures

H.R. 2792,¹ as reported by the Subcommittee on Select Revenue Measures, provides that income derived by individual members of an Indian tribe, or by a qualified Indian entity, from fishing rights-related activity is exempt from Federal and State income and social security taxes.² Fishing

¹ H.R. 2792 was jointly referred to the Committee on Interior and Insular Affairs and the Committee on Ways and Means. The bill was favorably reported by the Committee on Interior and Insular Affairs on September 21, 1987 (H. Rept. 100-312, Part I). The Subcommittee on Select Revenue Measures of the Committee on Ways and Means ordered favorably reported H.R. 2792, with an amendment in the nature of a substitute, on March 17, 1988.

² Individuals may derive exempt income through self-employed activities, as employees, or as owners of qualified Indian entities.

rights-related activities are defined as any activity by a tribe or members of that tribe directly related to harvesting, processing, or transporting fish harvested in the exercise of fishing rights guaranteed to that tribe by treaty, Federal statute, or executive order.

The bill defines a "qualified Indian entity" as an entity in which (1) all of the equity interests in the entity are owned by tribal members; (2) substantially all of the management functions of the entity are performed by tribal members; and (3) if the entity engages in any activity other than harvesting and selling of fish harvested by it (e.g., processing of fish), at least 90 percent of the annual gross receipts of the entity are derived from the exercise of protected fishing rights.

Income of individual Indians and qualified Indian entities would be tax exempt to the extent it was derived from the exercise of rights granted the tribe of which (a) the individual was a member or (b) the owners of the entity were members. Both individual tribal members and qualified Indian entities would be required to allocate income and expenses among fishing rights-related activities and other activities.

Income from Indian fishing activities protected by treaty, Federal statute, or executive order would be exempt from Federal income and social security taxes only to the extent provided for by the bill. If income from fishing rights-related activity is exempt from Federal tax, then the bill would prohibit imposition under State or local law of any tax on such income. (However, the bill does not limit exemptions from State and local taxes that may be broader than the exemption it provides.)

Effective date.--H.R. 2792 would apply to all taxable years beginning before or after the date of enactment as to which the period of assessment has not expired.

Possible Substitute

A possible substitute measure would consist of the Subcommittee bill (as described above) with the following modifications:

(1) The provisions exempting income of entities (e.g., corporations, partnerships, and cooperatives) engaged in fish processing or transportation activities would be amended to clarify that fishing rights income of jointly owned entities would qualify for tax-exemption where collectively members of each tribe whose fishing rights were being exercised owned at least 10 percent of the equity interests in the entity.

(2) The provisions exempting income of individuals

would be amended to clarify that income of an employee or owner (e.g., shareholder) of an entity that is jointly owned by members of more than one tribe would be exempt to the extent the income was derived from the exercise of fishing rights of the employee's or owner's tribe.

(3) Allocations between exempt and taxable income would not be required where all but a de minimis amount of the income of an individual or entity was derived from protected fishing activities.

(4) Clarification would be provided that the bill's provisions do not address the tax treatment of income derived from activities other than fishing that may be guaranteed to tribes by treaties, Federal statutes, or executive orders.

(5) Clerical amendments and cross references to the social security laws would be included in the bill.