

Draft Date: September 6, 2006

Case MIS No.: RP-154141-04

Part III - Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 170.)

Rev. Proc. 2006-XX

SECTION 1. PURPOSE

This revenue procedure provides the procedures under which the whaling expenses of an individual recognized by the Alaska Eskimo Whaling Commission (AEWC) as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities are substantiated for purposes of Internal Revenue Code § 170(n), as enacted by the American Jobs Creation Act of 2004 and effective for whaling expenses incurred after December 31, 2004. Pub. L. No. 109-357, § 335.

SECTION 2. BACKGROUND

.01 The AEWC was formed in 1977 to represent the Alaskan whaling communities in efforts to preserve the Eskimo subsistence hunting of bowhead whales (*Baleana mysticetus*). The AEWC's purpose is to protect the bowhead whale and its habitat; preserve Eskimo subsistence bowhead whaling and associated Eskimo culture,

traditions, and activities; and conduct research and education activities related to bowhead whales.

.02 The AEWG recognizes certain individuals as whaling captains and provides rules for the conduct of sanctioned whaling activities. It requires these captains to file reports detailing their whaling activities.

.03 Section 170(n) provides that an individual recognized by the AEWG as a whaling captain, who is responsible for maintaining and carrying out sanctioned whaling activities and engages in these activities during the taxable year, may claim a charitable contribution deduction not exceeding \$10,000 per taxable year for the reasonable and necessary whaling expenses paid in carrying out sanctioned whaling activities.

Section 170(n) is effective for contributions made after December 31, 2004.

.04 Under § 170(n)(2)(B), “whaling expenses” include amounts paid for (1) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities, (2) the supplying of food for the crew and other provisions for carrying out sanctioned whaling activities, and (3) the storage and distribution of the catch from sanctioned whaling activities.

.05 Section 170(n)(3) defines “sanctioned whaling activities” as subsistence bowhead whale hunting activities conducted pursuant to the management plan of the AEWG.

.06 Section 170(n)(4) directs the Secretary to issue guidance requiring taxpayers claiming a deduction under § 170(n) to substantiate their whaling expenses by maintaining appropriate written records of the time, place, date, amount, and nature of

the expenses and of the taxpayer's eligibility for the deduction.

.07 A whaling captain may deduct an amount for whaling expenses only as an itemized deduction. See § 63(d).

SECTION 3. SCOPE

This revenue procedure applies to taxpayers who are recognized by the AEWG as whaling captains and who pay whaling expenses during the taxable year in carrying out sanctioned whaling activities as captain of a whaling crew.

SECTION 4. SUBSTANTIATION OF EXPENSES

.01 In general. A taxpayer within the scope of this revenue procedure is required to substantiate a deduction for whaling expenses by maintaining adequate records of the elements of time, place, date, amount, and nature of the expenses as required under section 4.02, and of the taxpayer's eligibility for the deduction as required under section 4.03, of this revenue procedure.

.02 Requirements for adequate records of whaling expenses. A taxpayer within the scope of this revenue procedure must meet each of the following adequate records requirements:

(1) A taxpayer satisfies the adequate records requirement of this revenue procedure by maintaining written records that include--

(A) An expense report (such as an account book, diary, log, statement of expense, trip sheets, or similar record that lists each expense); and

(B) Documentary evidence (such as a receipt, bill, invoice, or credit card record of charge) for each expense of \$75 or more.

(2) Adequate records must document each applicable element of a whaling expense, including the following information:

(A) Time and date of departure and return for each trip for sanctioned whaling activities;

(B) Place or area of sanctioned whaling activities;

(C) Amount of each separate expense, such as the cost of weapons; and

(D) The nature of each expense including a description of the purpose of the expense and the relationship of the expense to sanctioned whaling activities.

(3) The expense report, in combination with the documentary evidence, must be sufficient to establish each element of a whaling expense. It is not necessary to record information in an expense report that duplicates information reflected on documentary evidence (such as a receipt) as long as the expense report and the documentary evidence substantiate each expense in an orderly manner.

(4) Adequate records must be made at or near the time of the expenditure or activity. Records are made at or near the time of the expenditure or activity if information relating to each element (time, place, date, amount, and nature of the expense) is recorded at a time when the taxpayer has full present knowledge of the information.

.03 Substantiation of eligibility for the deduction. A taxpayer must substantiate eligibility to deduct whaling expenses under § 170(n) by maintaining documentation that the taxpayer is recognized as a whaling captain by the AEWC and copies of all reports the taxpayer submits to the AEWC.

.04 Substantiation under revenue procedure required. An expense that is not substantiated in accordance with this revenue procedure may not be deducted as a whaling expense under § 170(n). Except as provided in section 5.02 of this revenue procedure, a taxpayer's uncorroborated statement or estimates of expenses unsupported by adequate records do not constitute substantiation for purposes of § 170(n).

SECTION 5. MAINTENANCE OF RECORDS

.01 A taxpayer must maintain with the taxpayer's books and records, and be able to produce upon request of the Internal Revenue Service, the documentation described in section 4 of this revenue procedure. A taxpayer is not required to attach the documentation to the taxpayer's tax return.

.02 Notwithstanding section 4.04 of this revenue procedure, a taxpayer who establishes that a failure to produce adequate records is due to the loss of the records through circumstances beyond the taxpayer's control, such as destruction by fire, flood, earthquake, or other casualty, may substantiate a deduction under § 170(n) by a reasonable reconstruction of the previously-maintained documentation.

SECTION 6. SPECIAL RULES

.01 A taxpayer may not deduct expenses under both § 170(n) and another provision of the Code.

.02 Expenses relating to a whaling boat that is used for sanctioned whaling activities and other activities in a taxable year must be allocated between the sanctioned whaling activities and other activities by comparing the total number of days the whaling boat is

used for sanctioned whaling activities to the total number of days in the taxable year.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for whaling expenses paid after **[Date of Publication]**.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-[To be inserted: xxx].

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 4 and 5. This information is required to substantiate the amount of expenses paid in support of native Alaskan subsistence whaling and eligibility to deduct the expenses. This information will be used to substantiate expenses paid during the taxable year in carrying out sanctioned whaling activities upon audit. The collection of information is required to obtain a benefit. The likely respondents are individuals recognized as whaling captains by the AEWC.

The estimated total annual recordkeeping burden is 48 hours.

The estimated annual burden per record keeper varies from one to three hours, depending on individual circumstances, with an estimated average of two hours. The

estimated number of record keepers is 12 to 24.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Christian Wood of the Office of the Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Jeffery Rodrick at (202) 622-4930 (not a toll-free call).