

**SPEAKER PANEL SUMMARY for *The Log* newsletter– Oct. 24, 2016  
by Captain Priscilla Travis**

**The Business of Being a Captain**

**Todd D. Lochner**, Esq., Proctor in Admiralty; **Wendy Kravit**, CPA and tax law educator; and **Hamilton Gale**, maritime businessman, discussed the legal, business and communication issues that face licensed captains.

**Legal Issues: Todd Lochner**

**Incorporation:** Working your license risks your nest egg if something goes wrong and you become a party to legal action against you. Operating as an LLC (limited liability company) is essential to protect yourself and your assets. The LLC is a corporate structure whereby the members of the company cannot be held personally liable for the company's debts or liabilities. It's easy and relatively inexpensive to create an LLC with the help of an attorney. State laws vary for LLCs, so make sure you have the correct advice in setting up the LLC. You must also have a separate bank account for money you make as a captain.

The other business structure available is an S-corporation, which is sometimes chosen for U.S. federal income tax purposes. An S-corp is a closely-held corporation (or, in some cases, a limited liability company or a partnership) that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code. Legal advice is necessary to set up an S-corporation because there are so many details that must be done correctly. If they are not done right, you could be exposed to liability issues.

**Contracts:** Have a contract for your work as a captain, not a handshake. This is especially important when doing vessel deliveries. (1) you must be the additional assured on the vessel owner's marine insurance policy; (2) the **owner** must hire the crew (you should never hire crew). The contract should say "I am **not** the Jones Act employer." Under the Jones Act, a seaman can sue you if he or she is injured and you're the hiring agent.

**Insurance types:** *License defense insurance* is relatively inexpensive, compared to civil liability *insurance*, which is expensive and not as easy to obtain. Civil liability insurance may be appropriate for you if you work your license a lot.

**General tip:** The Coast Guard may ask for your license in a casualty and you'll have to fill out CG form 2692. Even if you are not the operator of a vessel involved in a casualty, if you're the licensed person aboard you may become involved as a licensed mariner who is expected to have the most knowledge. Remember that you and the crew may be required to take a drug test within 32-hours of the incident and an alcohol screening within 2-hours. If you have a crew, carry alcohol test strips for them, just in case.

## **Captains and Taxes: Wendy Kravit, CPA**

Tax Issues: The LLC is for legal protection, not for tax purposes. There are three main types of people working their licenses:

1. the professional captain making a living using his or her license
2. the occasional paid captain, mostly having fun with his or her license
3. the once-in-a-blue-moon captain

Professional captains should (1) keep all records for at least four years. (2) keep records of fixed assets for at least four years after the sale of the asset (e.g. your boat, if you use it in your business). (3) What is deductible? This varies, but most clothing is NOT deductible (even expensive foul weather gear). (4) simple spreadsheet bookkeeping is adequate. (5) Keep all business-related receipts. Credit card statements are NOT adequate; the receipt should show what you bought, the price and the date.

Occasional paid captain: This is a hobby business? Internal Revenue Section 183 has multiple criteria to determine if it's a hobby or a business: (1) intent is critical; (2) 3 out of 5 year assumption; (3) deductibility of losses is limited to the income from the activity; (4) no Schedule C reporting; use Schedule A for expenses; (5) no self-employment tax.

Once-in-a-blue-moon paid captain: Did you get a 1099-MISC for the money you earned? Self-employment tax applies only to an individual employed in a trade or business: a hobby business is neither of these. IRS Regulation §1.1402(a)-2.

To see Wendy's PowerPoint, "Captains and Taxes," click [HERE](#).

## **Communication Issues: Ham Gale**

On the water, communication between captain and clients is affected by conditions not usually found on land: unfamiliar environment, stress, uncertainty and possible danger. Clients may not be able to communicate their situation to a captain accurately, which complicates everything.

Whether it's a geographic position (where are you?) or the exact nature of the problem, a captain may not receive accurate or enough information to determine or take proper action. A captain deals with clients and crew who have varying degrees of knowledge of the water and about their vessels. Some know almost nothing; some think they know everything. It's the job of the captain to figure out how to communicate effectively with each type of person. This means having a range of communication styles, from laid-back to forceful, depending on the situation and need for decisive action for safety reasons.

Operating a commercial towboat for so many years, Ham met all kinds of people who had called for assistance, but he had one advantage in communicating with them: they needed his help. This was usually good for getting clients to listen, but not always! He stressed that a captain must not only have a range of communication abilities, but also the patience to get as much correct information as possible from and to the client or crew.