

this section [amending this section] shall take effect as if included in section 205 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109-222].”

Pub. L. 109-432, div. A, title IV, § 415(b), Dec. 20, 2006, 120 Stat. 2965, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2006].”

Pub. L. 109-222, title II, § 205(b), May 17, 2006, 120 Stat. 350, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

### § 1356. Qualifying shipping activities

#### (a) Qualifying shipping activities

For purposes of this subchapter, the term “qualifying shipping activities” means—

- (1) core qualifying activities,
- (2) qualifying secondary activities, and
- (3) qualifying incidental activities.

#### (b) Core qualifying activities

For purposes of this subchapter, the term “core qualifying activities” means activities in operating qualifying vessels in United States foreign trade.

#### (c) Qualifying secondary activities

For purposes of this section—

##### (1) In general

The term “qualifying secondary activities” means secondary activities but only to the extent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

##### (2) Secondary activities

The term “secondary activities” means—

(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including—

(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

Such term shall not include any core qualifying activities.

#### (d) Qualifying incidental activities

For purposes of this section, the term “qualifying incidental activities” means shipping-related activities if—

(1) they are incidental to the corporation’s core qualifying activities,

(2) they are not qualifying secondary activities, and

(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation’s gross income from its core qualifying activities.

#### (e) Application of gross income tests in case of electing group

In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

(Added Pub. L. 108-357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1454; amended Pub. L. 109-135, title IV, § 403(g)(3), Dec. 21, 2005, 119 Stat. 2624.)

#### AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109-135, § 403(g)(3)(B), inserted concluding provisions.

Subsec. (c)(3). Pub. L. 109-135, § 403(g)(3)(A), struck out heading and text of par. (3). Text read as follows:

“(A) IN GENERAL.—Such term shall not include any core qualifying activities.

“(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

### § 1357. Items not subject to regular tax; depreciation; interest

#### (a) Exclusion from gross income

Gross income of an electing corporation shall not include its income from qualifying shipping activities.

#### (b) Electing group member

Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

#### (c) Denial of losses, deductions, and credits

##### (1) General rule

Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

##### (2) Depreciation

###### (A) In general

Notwithstanding paragraph (1), the adjusted basis (for purposes of determining

gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

**(B) Method**

**(i) In general**

Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

**(ii) Exception**

Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

**(3) Interest**

**(A) In general**

Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

**(B) Electing group**

In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1455.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (c)(2)(B)(ii), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

**§ 1358. Allocation of credits, income, and deductions**

**(a) Qualifying shipping activities**

For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

**(b) Exclusion of credits or deductions**

(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).<sup>1</sup>

(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

**(c) Transactions not at arm's length**

Section 482 applies in accordance with this subsection to a transaction or series of transactions—

(1) as between an electing corporation and another person, or

(2) as between an<sup>2</sup> person's qualifying shipping activities and other activities carried on by it.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1456.)

**§ 1359. Disposition of qualifying vessels**

**(a) In general**

If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

**(b) Period within which property must be replaced**

The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

(1) 3 years after the close of the first taxable year in which the gain is realized, or

(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

**(c) Application of section to noncorporate operators**

For purposes of this section, the term "qualifying vessel operator" includes any person who would be a qualifying vessel operator were such person a corporation.

**(d) Time for assessment of deficiency attributable to gain**

If a qualifying vessel operator has made the election provided in subsection (a), then—

(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(e) Basis of replacement qualifying vessel**

In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying

<sup>1</sup> So in original. Probably should be section "1352(2)".

<sup>2</sup> So in original.