

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)  |
|-----------------|--------------------|---|
| 53306 .....     | 46 App.:1161(c).   | June 29, 1936, ch. 858, title V, §511(c), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subd. (b), 57 Stat. 157; Dec. 23, 1944, ch. 714, §1, 58 Stat. 920; July 17, 1952, ch. 939, §10, 66 Stat. 762. |

In subsection (c)(2), the words “in any taxable year beginning after December 31, 1939” are omitted as obsolete. The words “prescribed by the Secretary of the Treasury” are substituted for “prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury” for consistency in the revised title and with other titles of the United States Code. See 26 U.S.C. 7805.

**§ 53307. Basis for determining gain or loss and for depreciating new vessels**

Under the income or excess profits tax laws of the United States, the basis for determining a gain or loss and for depreciation of a new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or for which purchase-money indebtedness is liquidated as provided in section 53310 of this title, with amounts from a construction reserve fund, shall be reduced by that part of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel that represents a gain not recognized for tax purposes under section 53306 of this title.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

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| 53307 .....     | 46 App.:1161(d).   | June 29, 1936, ch. 858, title V, §511(d), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; July 17, 1952, ch. 939, §11, 66 Stat. 763. |

**§ 53308. Order and proportions of deposits and withdrawals**

In this chapter—

(1) if the net proceeds of a sale or the net indemnity for a loss is deposited in more than one deposit, the amount consisting of the gain shall be deemed to be deposited first;

(2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and

(3) if a deposit consists in part of a gain not recognized under section 53306 of this title, any expenditure, obligation, or withdrawal applied against that deposit shall be deemed to be a gain in the proportion that the part of the deposit consisting of a gain bears to the total amount of the deposit.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

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| 53308 .....     | 46 App.:1161(e).   | June 29, 1936, ch. 858, title V, §511(e), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107. |

**§ 53309. Accumulation of deposits**

For any taxable year, amounts on deposit in a construction reserve fund on the last day of the taxable year, for which the requirements of section 53310 of this title have been satisfied (to the extent they apply on the last day of the taxable year), are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a)).

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

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| Revised Section | Source (U.S. Code) | Source (Statutes at Large)  |
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| 53309 .....     | 46 App.:1161(f).   | June 29, 1936, ch. 858, title V, §511(f), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107. |

The words “are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a))” are substituted for “shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code” because section 102 of the Internal Revenue Code of 1939 has been superseded by part 1 of subchapter G of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 531 et seq.). See also 46 C.F.R. §287.16 (2003).

**§ 53310. Obligation of deposits and period for construction of certain vessels**

(a) APPLICATION OF SECTIONS 53306 AND 53309.—Sections 53306 and 53309 of this title apply to a deposit in a construction reserve fund only if, within 3 years after the date of the deposit (and any extension under subsection (c))—

(1)(A) a contract is made for the construction or acquisition of a new vessel or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the reconstruction or reconditioning of a new vessel;

(B) the deposit is expended or obligated for expenditure under that contract;

(C) at least 12.5 percent of the construction or contract price of the vessel is paid or irrevocably committed for payment; and

(D) the plans and specifications for the vessel are approved by the Secretary to the extent the Secretary considers necessary; or

(2) the deposit is expended or obligated for expenditure for the liquidation of existing or subsequently incurred purchase-money indebtedness to a person not a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel.

(b) ADDITIONAL REQUIREMENTS FOR CERTAIN VESSELS.—In addition to the requirements of subsection (a)(1), for a vessel not constructed under a construction-differential subsidy contract or not bought from the Secretary of Transportation—

(1) at least 5 percent of the construction (or, if the contract covers more than one vessel, at

least 5 percent of the construction of the first vessel) must be completed within 6 months after the date of the construction contract (or within the period of an extension under subsection (c)), as estimated by the Secretary and certified by the Secretary to the Secretary of the Treasury; and

(2) construction under the contract must be completed with reasonable dispatch thereafter.

(c) EXTENSIONS.—The Secretary of Transportation may grant extensions of the period within which the deposits must be expended or obligated or within which the construction must have progressed to the extent of 5 percent completion under this section. However, the extensions may not be for a total of more than 2 years for the expenditure or obligation of deposits or one year for the progress of construction.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

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| Revised Section | Source (U.S. Code)             | Source (Statutes at Large)   |
|-----------------|--------------------------------|--|
| 53310(a) .....  | 46 App.:1161(g) (less (1)(B)). | June 29, 1936, ch. 858, title V, §511(g), (h), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107; June 17, 1943, ch. 130, subdvs. (c), (d), 57 Stat. 158; July 17, 1952, ch. 939, §§12, 13(a), 66 Stat. 763; Pub. L. 86-237, §1, Sept. 8, 1959, 73 Stat. 471; Pub. L. 87-303, §3, Sept. 26, 1961, 75 Stat. 661; Pub. L. 87-782, §1, Oct. 10, 1962, 76 Stat. 796; Pub. L. 88-227, §1, Dec. 23, 1963, 77 Stat. 470; Pub. L. 88-595, §1, Sept. 12, 1964, 78 Stat. 943; Pub. L. 97-31, §12(92), Aug. 6, 1981, 95 Stat. 161. |
| 53310(b) .....  | 46 App.:1161(g)(1)(B).         |  |
| 53310(c) .....  | 46 App.:1161(h).               |  |

In this section, the language about joint regulations in 46 App. U.S.C. 1161(g) and (h) is omitted as unnecessary because of section 53302(b) of the revised title.

In subsection (a), the words “(i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of subsection (h) of this section, in the case of deposits made prior to the date on which these amendatory provisions become effective, or” in 46 App. U.S.C. 1161(g)(1) and (2) are omitted as obsolete. In paragraph (1)(A), the words “or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the reconstruction or reconditioning of a new vessel” are substituted for “(or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation, for the reconstruction or reconditioning of a new vessel or vessels” to eliminate unnecessary words.

In subsection (c), the proviso in 46 App. U.S.C. 1161(h) is omitted as obsolete.

**§ 53311. Taxation of deposits on failure of conditions**

A deposited gain, if otherwise taxable income under the law applicable to the taxable year in which the gain was realized, shall be included in gross income for that taxable year, except for purposes of the declared value excess profits tax and the capital stock tax, if—

(1) the deposited gain is not expended or obligated within the appropriate period under section 53310 of this title;

(2) the deposited gain is withdrawn before the end of that period;

(3) the construction related to that deposited gain has not progressed to the extent of 5 percent of completion within the appropriate period under section 53310 of this title; or

(4) the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction related to that deposited gain is not completed with reasonable dispatch.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1590.)

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| Revised Section | Source (U.S. Code) | Source (Statutes at Large)   |
|-----------------|--------------------|--|
| 53311 .....     | 46 App.:1161(i).   | June 29, 1936, ch. 858, title V, §511(i), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107; July 17, 1952, ch. 939, §13(b), 66 Stat. 764; Pub. L. 97-31, §12(92)(A), Aug. 6, 1981, 95 Stat. 161. |

The last sentence of 46 App. U.S.C. 1161(i) is omitted as obsolete.

**§ 53312. Assessment and collection of deficiency tax**

Notwithstanding any other provision of law, a deficiency in tax for a taxable year resulting from the inclusion of an amount in gross income as provided by section 53311 of this title, and the amount to be treated as a deficiency under section 53311 instead of as an adjustment for the declared value excess profits tax, may be assessed or a civil action may be brought to collect the deficiency without assessment, at any time. Interest on a deficiency or amount to be treated as a deficiency does not begin until the date the deposited gain or part of the deposited gain in question is required to be included in gross income under section 51111.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1590.)

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|-----------------|--------------------|---|
| 53312 .....     | 46 App.:1161(j).   | June 29, 1936, ch. 858, title V, §511(j), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108. |

**CHAPTER 535—CAPITAL CONSTRUCTION FUNDS**

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