

(3) interest (except tax-exempt interest referred to in subsection (b)(4)) and other ordinary income (except any dividend referred to in paragraph (5)) received on assets held in the fund;

(4) ordinary income from a transaction described in section 53505(a)(3) of this title; and

(5) that portion of any dividend referred to in subsection (b)(3) not taken into account under subsection (b)(3).

(e) WHEN LOSSES ALLOWED.—Except on termination of a fund, capital losses referred to in subsection (c) or (d)(2) shall be allowed only as an offset to gains referred to in subsection (c) or (d)(2), respectively.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1595.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 53508 | 46 App.:1177(e). | June 29, 1936, ch. 858, title VI, §607(e), 49 Stat. 2005; June 23, 1938, ch. 600, §§23-28, 52 Stat. 960; Aug. 4, 1939, ch. 417, §10, 53 Stat. 1185; July 17, 1952, ch. 939, §§17-19, 66 Stat. 764; Pub. L. 85-637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 87-45, §6, May 27, 1961, 75 Stat. 91; Pub. L. 87-271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91-469, §21(a), Oct. 21, 1970, 84 Stat. 1028; Pub. L. 99-514, title II, §261(e)(3), (4), Oct. 22, 1986, 100 Stat. 2215. |

§ 53509. Qualified withdrawals

(a) IN GENERAL.—Subject to subsection (b), a withdrawal from a capital construction fund is a qualified withdrawal if it is made under the terms of the agreement and is for—

(1) the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel; or

(2) the payment of the principal on indebtedness incurred in the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel.

(b) BARGES AND CONTAINERS.—Except as provided in regulations prescribed by the Secretary, subsection (a) applies to a barge or container only if it is constructed in the United States.

(c) TREATMENT AS NONQUALIFIED WITHDRAWAL.—Under joint regulations, if the Secretary determines that a substantial obligation under an agreement is not being fulfilled, the Secretary, after notice and opportunity for a hearing to the person maintaining the fund, may treat any amount in the fund as an amount withdrawn from the fund in a nonqualified withdrawal.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1596.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|--|
| 53509 | 46 App.:1177(f). | June 29, 1936, ch. 858, title VI, §607(f), 49 Stat. 2005; June 23, 1938, ch. 600, §§23-28, 52 Stat. 960; Aug. 4, 1939, ch. 417, §10, 53 Stat. 1185; July 17, 1952, ch. 939, §§17-19, 66 Stat. 764; Pub. L. 85-637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 87-45, §6, May 27, 1961, 75 Stat. 91; Pub. L. 87-271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91-469, §21(a), Oct. 21, 1970, 84 Stat. 1029; Pub. L. 97-31, §12(97)(A), Aug. 6, 1981, 95 Stat. 162. |

In subsection (c), the words “any amount in the fund” are substituted for “the entire fund or any portion thereof” to eliminate unnecessary words.

§ 53510. Tax treatment of qualified withdrawals and basis of property

(a) ORDER OF WITHDRAWALS.—A qualified withdrawal from a capital construction fund shall be treated as made—

- (1) first from the capital account;
- (2) second from the capital gain account; and
- (3) third from the ordinary income account.

(b) ORDINARY INCOME ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the ordinary income account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.

(c) CAPITAL GAIN ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the capital gain account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.

(d) WITHDRAWALS TO PAY PRINCIPAL.—If a portion of a qualified withdrawal to pay the principal on indebtedness is made from the ordinary income account or the capital gain account, an amount equal to the total reduction that would be required by subsections (b) and (c) if the withdrawal were a qualified withdrawal for a purpose described in those subsections shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. The remaining amount of the withdrawal shall be treated as a nonqualified withdrawal.

(e) GAIN ON PROPERTY WITH REDUCED BASIS.—If property, the basis of which was reduced under subsection (b), (c), or (d), is disposed of, any gain realized on the disposition, to the extent it does not exceed the total reduction in the basis of the property under those subsections, shall be treated as an amount referred to in section 53511(c)(1) of this title withdrawn on the date of disposition of the property. Subject to conditions prescribed in joint regulations, this subsection does not apply to a disposition if there is a redeposit, in an amount determined under joint regulations, that restores the fund as far as practicable to the position it was in before the withdrawal.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1596.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|--|
| 53510 | 46 App.:1177(g). | June 29, 1936, ch. 858, title VI, §607(g); 49 Stat. 2005; June 23, 1938, ch. 600, §§23-28, 52 Stat. 960; Aug. 4, 1939, ch. 417, §10, 53 Stat. 1185; July 17, 1952, ch. 939, §§17-19, 66 Stat. 764; Pub. L. 85-637, Aug. 14, 1958, 72 Stat. 216; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 87-45, §6, May 27, 1961, 75 Stat. 91; Pub. L. 87-271, Sept. 21, 1961, 75 Stat. 570; restated Pub. L. 91-469, §21(a), Oct. 21, 1970, 84 Stat. 1029; Pub. L. 99-514, title II, §261(e)(5), Oct. 22, 1986, 100 Stat. 2215. |

§ 53511. Tax treatment of nonqualified withdrawals

(a) IN GENERAL.—Except as provided in section 53513 of this title, a withdrawal from a fund that is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(b) ORDER OF WITHDRAWALS.—A nonqualified withdrawal shall be treated as made—

- (1) first from the ordinary income account;
- (2) second from the capital gain account; and
- (3) third from the capital account.

(c) TAX TREATMENT.—For purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

- (1) a nonqualified withdrawal from the ordinary income account shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made;
- (2) a nonqualified withdrawal from the capital gain account shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during that year from the disposition of an asset held for more than 6 months; and
- (3) for the period through the last date prescribed for payment of tax for the taxable year in which the withdrawal is made—

(A) no interest shall be payable under section 6601 of such Code (26 U.S.C. 6601) and no addition to the tax shall be payable under section 6651 of such Code (26 U.S.C. 6651);

(B) interest on the amount of the additional tax attributable to an amount treated as a nonqualified withdrawal from the ordinary income account or the capital gain account shall be paid at the rate determined under subsection (d) from the last date prescribed for payment of the tax for the taxable year for which the amount was deposited in the fund; and

(C) no interest shall be payable on amounts treated as withdrawn on a last-in-first-out basis under section 53512 of this title.

(d) INTEREST RATE.—The rate of interest under subsection (c)(3)(B) for a nonqualified withdrawal made in a taxable year beginning after 1971 shall be determined and published jointly by the Secretary and the Secretary of the Treasury. The rate shall be such that its relationship to 8 percent is comparable, as determined by the Secretaries under joint regulations, to the relationship between—

(1) the money rates and investment yields for the calendar year immediately before the beginning of the taxable year; and

(2) the money rates and investment yields for the calendar year 1970.

(e) NONQUALIFIED WITHDRAWALS.—

(1) IN GENERAL.—The following applicable percentage of any amount that remains in a capital construction fund at the close of the following specified taxable year following the taxable year for which the amount was deposited shall be treated as a nonqualified withdrawal:

| If the amount remains in the fund at the close of the— | The applicable percentage is— |
|--|-------------------------------|
| 26th taxable year | 20 percent |
| 27th taxable year | 40 percent |
| 28th taxable year | 60 percent |
| 29th taxable year | 80 percent |
| 30th taxable year | 100 percent. |

(2) EARNINGS.—The earnings of a capital construction fund for any taxable year (except net gains) shall be treated under this subsection as an amount deposited for the taxable year.

(3) CONTRACT FOR QUALIFIED WITHDRAWAL.—Under paragraph (1), an amount shall not be treated as remaining in a capital construction fund at the close of a taxable year to the extent there is a binding contract at the close of the taxable year for a qualified withdrawal of the amount for an identified item for which the withdrawal may be made.

(4) EXCESS EARNINGS.—If the Secretary determines that the balance in a capital construction fund exceeds the amount appropriate to meet the vessel construction program objectives of the person that established the fund, the amount of the excess shall be treated as a nonqualified withdrawal under paragraph (1) unless the person develops appropriate program objectives within 3 years to dissipate the excess.

(5) AMOUNTS IN FUND ON JANUARY 1, 1987.—Under this subsection, amounts in a capital construction fund on January 1, 1987, shall be treated as having been deposited in that fund on that date.

(f) TAX DETERMINATIONS.—

(1) IN GENERAL.—For a taxable year for which there is a nonqualified withdrawal (including an amount treated as a nonqualified withdrawal under subsection (e)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) shall be determined by—

(A) excluding the withdrawal from gross income; and

(B) increasing the tax imposed by chapter 1 of such Code by the product of the amount of the withdrawal and the highest tax rate specified in section 1 (or section 11 for a corporation) of such Code (26 U.S.C. 1, 11).

(2) MAXIMUM TAX RATE.—For that portion of a nonqualified withdrawal made from the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code (26 U.S.C. 1(h), 1201(a)) applies, the tax rate used under paragraph (1)(B) may not exceed 20 percent (or 34 percent for a corporation).