

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1450; amended Pub. L. 109-135, title IV, §403(g)(1)(A), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (d). Pub. L. 109-135 substituted “ownership, charter, and operating agreement interests” for “ownership and charter interests”.

EFFECTIVE DATE OF 2005 AMENDMENT

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

§ 1354. Alternative tax election; revocation; termination

(a) In general

A qualifying vessel operator may elect the application of this subchapter.

(b) Time and manner; years for which effective

An election under this subchapter—

(1) shall be made in such form as prescribed by the Secretary, and

(2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made on or before the due date (including extensions) for filing the corporation's return for such taxable year.

(c) Consistent elections by members of controlled groups

An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

(d) Termination

(1) By revocation

(A) In general

An election under subsection (a) may be terminated by revocation.

(B) When effective

Except as provided in subparagraph (C)—

(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(C) Revocation may specify prospective date

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

(2) By person ceasing to be qualifying vessel operator

(A) In general

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing cor-

poration) such corporation ceases to be a qualifying vessel operator.

(B) When effective

Any termination under this paragraph shall be effective on and after the date of cessation.

(C) Annualization

The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

(e) Election after termination

If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1451; amended Pub. L. 109-135, title IV, §403(g)(4), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109-135 inserted “on or” after “only if made” in concluding provisions.

EFFECTIVE DATE OF 2005 AMENDMENT

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

§ 1355. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Electing corporation

The term “electing corporation” means any corporation for which an election is in effect under this subchapter.

(2) Electing group; controlled group

(A) Electing group

The term “electing group” means a controlled group of which one or more members is an electing corporation.

(B) Controlled group

The term “controlled group” means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

(3) Qualifying vessel operator

The term “qualifying vessel operator” means any corporation—

(A) who operates one or more qualifying vessels, and

(B) who meets the shipping activity requirement in subsection (c).

(4) Qualifying vessel

The term “qualifying vessel” means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of

not less than 6,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

(5) United States flag vessel

The term “United States flag vessel” means any vessel documented under the laws of the United States.

(6) United States domestic trade

The term “United States domestic trade” means the transportation of goods or passengers between places in the United States.

(7) United States foreign trade

The term “United States foreign trade” means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

(b) Operating a vessel

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), a person is treated as operating any vessel during any period if—

- (A)(i) such vessel is owned by, or chartered (including a time charter) to, the person, or
- (ii) the person provides services for such vessel pursuant to an operating agreement, and

(B) such vessel is in use as a qualifying vessel during such period.

(2) Bareboat charters

A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

- (A)(i) the vessel is temporarily surplus to the person’s requirements and the term of the charter does not exceed 3 years, or
- (ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and

(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

(c) Shipping activity requirement

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

(2) Special rule for 1st year of election

A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

(3) Controlled groups

A corporation who is a member of a controlled group meets the shipping activity re-

quirement of this subsection only if such requirement is met determined by treating all members of such group as 1 person.

(4) Requirement

The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

(d) Activities carried on partnerships, etc.

In applying this subchapter to a partner in a partnership—

(1) each partner shall be treated as operating vessels operated by the partnership,

(2) each partner shall be treated as conducting the activities conducted by the partnership, and

(3) the extent of a partner’s ownership, charter, or operating agreement interest in any vessel operated by the partnership shall be determined on the basis of the partner’s interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

(e) Effect of temporarily ceasing to operate a qualifying vessel

(1) In general

For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

(A) that it has temporarily ceased to operate the qualifying vessel, and

(B) its intention to resume operating the qualifying vessel.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation’s tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

(B) the electing corporation resumes operation of the qualifying vessel.

(f) Effect of temporarily operating a qualifying vessel in the United States domestic trade

(1) In general

For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

(B) its intention to resume operation of the vessel in the United States foreign trade.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary use under paragraph (1) continues until the earlier of the date of¹ which—

(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

(B) the electing corporation resumes operation of the vessel in the United States foreign trade.

(4) No disregard if domestic trade use exceeds 30 days

Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

(g) Great Lakes domestic shipping to not disqualify vessel

(1) In general

If the electing corporation elects (at such time and in such manner as the Secretary may require) to apply this subsection for any taxable year to any qualifying vessel which is used in qualified zone domestic trade during the taxable year—

(A) solely for purposes of subsection (a)(4), such use shall be treated as use in United States foreign trade (and not as use in United States domestic trade), and

(B) subsection (f) shall not apply with respect to such vessel for such taxable year.

(2) Effect of temporarily operating vessel in United States domestic trade

In the case of a qualifying vessel to which this subsection applies—

(A) In general

An electing corporation shall be treated as using such vessel in qualified zone domestic trade during any period of temporary use in the United States domestic trade (other than qualified zone domestic trade) if the electing corporation gives timely notice to the Secretary stating—

(i) that it temporarily operates or has operated in the United States domestic trade (other than qualified zone domestic trade) a qualifying vessel which had been used in the United States foreign trade or qualified zone domestic trade, and

(ii) its intention to resume operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(B) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(C) Period disregard in effect

The period of temporary use under subparagraph (A) continues until the earlier of the date of which—

(i) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade or qualified zone domestic trade, or

(ii) the electing corporation resumes operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(D) No disregard if domestic trade use exceeds 30 days

Subparagraph (A) shall not apply to any qualifying vessel which is operated in the United States domestic trade (other than qualified zone domestic trade) for more than 30 days during the taxable year.

(3) Allocation of income and deductions to qualifying shipping activities

In the case of a qualifying vessel to which this subsection applies, the Secretary shall prescribe rules for the proper allocation of income, expenses, losses, and deductions between the qualified shipping activities and the other activities of such vessel.

(4) Qualified zone domestic trade

For purposes of this subsection—

(A) In general

The term “qualified zone domestic trade” means the transportation of goods or passengers between places in the qualified zone if such transportation is in the United States domestic trade.

(B) Qualified zone

The term “qualified zone” means the Great Lakes Waterway and the St. Lawrence Seaway.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 108-357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1452; amended Pub. L. 109-135, title IV, §403(g)(1)(B)-(2), Dec. 21, 2005, 119 Stat. 2624; Pub. L. 109-222, title II, §205(a), May 17, 2006, 120 Stat. 350; Pub. L. 109-432, div. A, title IV, §§413(a), 415(a), Dec. 20, 2006, 120 Stat. 2963.)

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109-432, §413(a), substituted “6,000” for “10,000 (6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)”.

Pub. L. 109-222 inserted “(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)” after “10,000”.

Subsecs. (g), (h). Pub. L. 109-432, §415(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2005—Subsec. (a)(8). Pub. L. 109-135, §403(g)(1)(B), struck out heading and text of par. (8). Text read as follows: “The term ‘charter’ includes an operating agreement.”

Subsec. (b)(1). Pub. L. 109-135, §403(g)(1)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

¹ So in original.

“(A) owned by, or chartered (including a time charter) to, the person, and

“(B) is in use as a qualifying vessel during such period.”

Subsec. (c)(3). Pub. L. 109-135, §403(g)(2), substituted “determined by treating all members of such group as 1 person.” for “determined—

“(A) by treating all members of such group as 1 person, and

“(B) by disregarding vessel charters between members of such group.”

Subsec. (d)(3). Pub. L. 109-135, §403(g)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “the extent of a partner’s ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner’s interest in the partnership.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §413(b), Dec. 20, 2006, 120 Stat. 2963, provided that: “The amendment made by 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 “qualified 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.