

§ 53505. Ceiling on deposits

(a) MAXIMUM DEPOSITS.—The amount deposited in a capital construction fund for a taxable year may not exceed the sum of—

(1) that portion of the taxable income of the owner or lessee for the taxable year (computed under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) but without regard to the carryback of net operating loss or net capital loss or this chapter) that is attributable to the operation of agreement vessels in the foreign or domestic trade of the United States or in the fisheries of the United States;

(2) the amount allowable as a deduction under section 167 of such Code (26 U.S.C. 167) for the taxable year for agreement vessels;

(3) if the transaction is not taken into account for purposes of paragraph (1), the net proceeds (as defined in joint regulations) from the disposition of an agreement vessel or from insurance or indemnity attributable to an agreement vessel; and

(4) the receipts from the investment or reinvestment of amounts held in the fund.

(b) REDUCTIONS FOR LESSEES.—For a lessee, the maximum amount that may be deposited for an agreement vessel under subsection (a)(2) for any period shall be reduced by any amount the owner is required or permitted, under the capital construction fund agreement, to deposit for that period for the vessel under subsection (a)(2).

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1593.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 53505, 46 App.:1177(b)(1), (2), June 29, 1936, ch. 858, title VI, §607(b)(1), (2), 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. 1027.

In subsection (a)(1), the word "trade" is substituted for "commerce" for consistency in the chapter.

§ 53506. Investment and fiduciary requirements

(a) IN GENERAL.—Amounts in a capital construction fund shall be kept in the depository specified in the agreement and shall be subject to trustee and other fiduciary requirements prescribed by the Secretary. Except as provided in subsection (b), amounts in the fund may be invested only in interest-bearing securities approved by the Secretary.

(b) STOCK INVESTMENTS.—

(1) IN GENERAL.—With the approval of the Secretary, an agreed percentage (but not more than 60 percent) of the assets of the fund may be invested in the stock of domestic corporations that—

(A) is fully listed and registered on an exchange registered with the Securities and

Exchange Commission as a national securities exchange; and

(B) would be acquired by a prudent investor seeking a reasonable income and the preservation of capital.

(2) PREFERRED STOCK.—The preferred stock of a corporation is deemed to satisfy the requirements of this subsection, even though it may not be registered and listed because it is nonvoting stock, if the common stock of the corporation satisfies the requirements and the preferred stock otherwise would satisfy the requirements.

(c) MAINTAINING AGREED PERCENTAGE.—If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in a way that tends to restore the fair market value of the stock to not more than the agreed percentage.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1594.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 53506, 46 App.:1177(c), June 29, 1936, ch. 858, title VI, §607(c), 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. 1027; Pub. L. 97-31, §12(97)(A), Aug. 6, 1981, 95 Stat. 162.

In subsection (b)(1)(B), the words "prudent investor" are substituted for "prudent men of discretion and intelligence in such matters" to eliminate unnecessary words.

§ 53507. Nontaxation of deposits

(a) TAX TREATMENT.—Subject to subsection (b), under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

(1) taxable income (determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518)) for the taxable year shall be reduced by the amount deposited for the taxable year out of amounts referred to in section 53505(a)(1) of this title;

(2) a gain from a transaction referred to in section 53505(a)(3) of this title shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from the transaction is deposited in the fund;

(3) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account;

(4) the earnings and profits of a corporation (within the meaning of section 316 of such Code (26 U.S.C. 316)) shall be determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518); and

(5) in applying the tax imposed by section 531 of such Code (26 U.S.C. 531), amounts held in the fund shall not be taken into account.

(b) **CONDITION.**—This section applies to an amount only if the amount is deposited in the fund under the agreement within the time provided in joint regulations.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1594.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53507	46 App.:1177(d).	June 29, 1936, ch. 858, title VI, §607(d), 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)(1), (2), Oct. 22, 1986, 100 Stat. 2215.

§ 53508. Separate accounts within a fund

(a) **IN GENERAL.**—A capital construction fund shall have three accounts:

- (1) The capital account.
- (2) The capital gain account.
- (3) The ordinary income account.

(b) **CAPITAL ACCOUNT.**—The capital account shall consist of—

- (1) amounts referred to in section 53505(a)(2) of this title;
- (2) amounts referred to in section 53505(a)(3) of this title, except that portion representing a gain not taken into account because of section 53507(a)(2) of this title;
- (3) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 243(a)(1)) of any dividend received by the fund for which the person maintaining the fund would be allowed (were it not for section 53507(a)(3) of this title) a deduction under section 243 of such Code (26 U.S.C. 243); and

- (4) interest income exempt from taxation under section 103 of such Code (26 U.S.C. 103).
- (c) **CAPITAL GAIN ACCOUNT.**—The capital gain account shall consist of—
- (1) amounts representing capital gains on assets held for more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus
 - (2) amounts representing capital losses on assets held in the fund for more than 6 months.

(d) **ORDINARY INCOME ACCOUNT.**—The ordinary income account shall consist of—

- (1) amounts referred to in section 53505(a)(1) of this title;
- (2)(A) amounts representing capital gains on assets held for not more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus
- (B) amounts representing capital losses on assets held in the fund for not more than 6 months;

(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.)