

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)<sup>1</sup> 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).

(3) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (except earnings on deposits) made by the taxpayer in a taxable year that did not reduce the taxpayer's liability for tax under chapter 1 of such Code (26 U.S.C. ch. 1) for a taxable year before the taxable year in which the withdrawal occurs—

(A) that portion shall not be taken into account under paragraph (1); and

(B) an amount equal to that portion shall be allowed as a deduction under section 172 of such Code (26 U.S.C. 172) for the taxable year in which the withdrawal occurs.

(4) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—A nonqualified withdrawal excluded from gross income under paragraph (1) shall be excluded in determining taxable income under section 172(b)(2) of such Code (26 U.S.C. 172(b)(2)).

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1597; Pub. L. 112-240, title I, §102(c)(1)(E), Jan. 2, 2013, 126 Stat. 2319.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53511 .....	46 App.:1177(h) (less (2) (last sentence)).	June 29, 1936, ch. 858, title VI, §607(h) (less (2) (last sentence)), 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. 1030; Pub. L. 97-31, §12(97)(A), Aug. 6, 1981, 95 Stat. 162; Pub. L. 99-514, title II, §261(e)(6), Oct. 22, 1986, 100 Stat. 2215; Pub. L. 100-647, title I, §1002(m)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101-508, title XI, §11101(d)(7)(B), Nov. 5, 1990, 104 Stat. 1388-405; Pub. L. 105-34, title III, §311(c)(2), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108-27, title III, §301(a)(2)(E), May 28, 2003, 117 Stat. 758.

In subsection (c)(3)(C), the words “or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 1176(5) of this Appendix as in effect on December 31, 1969” are omitted as obsolete.

In subsection (d), the words “made in a taxable year beginning in 1970 or 1971 is 8 percent” are omitted as obsolete.

REFERENCES IN TEXT

Section 1201 of such Code, referred to in subsec. (f)(2), means section 1201 of the Internal Revenue Code of 1986, act Aug. 16, 1954, ch. 736, 68A Stat. 320, which was repealed by Pub. L. 115-97, title I, §13001(b)(2)(A), Dec. 22, 2017, 131 Stat. 2096, applicable to taxable years beginning after Dec. 31, 2017.

AMENDMENTS

2013—Subsec. (f)(2). Pub. L. 112-240 substituted “20 percent” for “15 percent”.

<sup>1</sup> See References in Text note below.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 applicable to taxable years beginning after Dec. 31, 2012, see section 102(d)(1) of Pub. L. 112-240, set out as a note under section 1 of Title 26, Internal Revenue Code.

APPLICATION OF SUNSET PROVISION TO SUBSECTION (f)(2)

Pub. L. 110-181, div. C, title XXXV, §3528, Jan. 28, 2008, 122 Stat. 603, provided that: "For purposes of section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27, [former] 26 U.S.C. 1 note), the amendment made by section 301(a)(2)(E) of that Act [which amended section 1177(h)(6)(A) of the former Appendix to this title from which subsec. (f)(2) of this section was derived by substituting "15 percent" for "20 percent"] shall be deemed to have been made to section 53511(f)(2) of title 46, United States Code."

[Section 303 of Pub. L. 108-27 was repealed by Pub. L. 112-240, title I, §102(a), Jan. 2, 2013, 126 Stat. 2318.]

§ 53512. FIFO and LIFO withdrawals

(a) FIFO.—Except as provided in subsection (b), an amount withdrawn from an account under this chapter shall be treated as withdrawn on a first-in-first-out basis.

(b) LIFO.—An amount withdrawn from an account under this chapter shall be treated as withdrawn on a last-in-first-out basis if it is—

(1) a nonqualified withdrawal for research, development, and design expenses incident to new and advanced vessel design, machinery, and equipment; or

(2) an amount treated as a nonqualified withdrawal under section 53510(d) of this title.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 53512, 46 App.:1177(h)(2) (last sentence), June 29, 1936, ch. 858, title VI, §607(h)(2) (last sentence), 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. 1030.

§ 53513. Corporate reorganizations and partnership changes

Under joint regulations—

(1) a transfer of a capital construction fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1986 (26 U.S.C. 381) applies may be treated as if the transaction is not a nonqualified withdrawal; and

(2) a similar rule shall be applied to a continuation of a partnership (within the meaning of subchapter K of chapter 1 of such Code (26 U.S.C. 701 et seq.)).

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 53513, 46 App.:1177(i), June 29, 1936, ch. 858, title VI, §607(i), 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. 1031.

§ 53514. Relationship of old fund to new fund

(a) DEFINITION.—In this section, the term "old fund" means a capital construction fund maintained before October 21, 1970.

(b) ELECTION TO MAINTAIN OLD FUND.—A person maintaining an old fund may elect to continue the old fund, but may not—

(1) hold amounts in the old fund beyond the expiration date provided in the agreement under which the old fund is maintained (determined without regard to an extension or renewal made after April 14, 1970); or

(2) maintain simultaneously the old fund and a new fund established under this chapter.

(c) APPLICATION OF NEW FUND AGREEMENT TO OLD FUND AMOUNTS.—If a person makes an agreement under this chapter to establish a new fund, the person may agree to extend the agreement to some or all of the amounts in an old fund. Each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund. For purposes of section 53511(c)(3) of this title, the date of the deposit of an item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is later.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 53514, 46 App.:1177(j), June 29, 1936, ch. 858, title VI, §607(j), 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. 1031.

§ 53515. Records and reports

A person maintaining a fund under this chapter shall keep records and make reports as required by the Secretary or the Secretary of the Treasury.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1599.)