§ 7518. Tax incentives relating to merchant marine capital construction funds

(a) Ceiling on deposits

(1) In general

The amount deposited in a fund established under chapter 535 of title 46 of the United States Code (hereinafter in this section referred to as a ''capital construction fund'') shall not exceed for any taxable year the sum of:

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

(B) the amount allowable as a deduction under section 167 for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from—

(i) the sale or other disposition of any agreement vessel, or

(ii) insurance or indemnity attributable to any agreement vessel, and

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

(2) Limitations on deposits by lessees

In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under chapter 535 of title 46, United States Code, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) Certain barges and containers included

For purposes of paragraph (1), the term ''agreement vessel'' includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(b) Requirements as to investments

(1) In general

Amounts in any capital construction fund shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary.

(2) Limitation on fund investments

Amounts in any capital construction fund may be invested only in interest-bearing securities approved by the Secretary; except that, if such Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. 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 such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage.

(3) Investment in certain preferred stock permitted

For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(c) Nontaxability for deposits

(1) In general

For purposes of this title—

(A) taxable income (determined without regard to this section and chapter 535 of title 46, United States Code) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (a)(1)(A),

(B) gain from a transaction referred to in subsection (a)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

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

(D) the earnings and profits (within the meaning of section 316) of any corporation shall be determined without regard to this section and chapter 535 of title 46, United States Code, and

(E) in applying the tax imposed by section 531 (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Only qualified deposits eligible for treatment

Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(d) Establishment of accounts

For purposes of this section—

(1) In general

Within a capital construction fund 3 accounts shall be maintained:

(A) the capital account,

(B) the capital gain account, and

(C) the ordinary income account.

(2) Capital account

The capital account shall consist of—

(A) amounts referred to in subsection (a)(1)(B),

(B) amounts referred to in subsection (a)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (c)(1)(B),

(C) the percentage applicable under section 243(a)(1) of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (c)(1)(C)) be allowed a deduction under section 243, and

(D) interest income exempt from taxation under section 103.

(3) Capital gain account

The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (a)(1)(C) or (a)(1)(D), reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) Ordinary income account

The ordinary income account shall consist of—

(A) amounts referred to in subsection (a)(1)(A),

(B)(i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (a)(1)(C) or (a)(1)(D), reduced by

(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (a)(1)(C), and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Capital losses only allowed to offset certain gains

Except on termination of a capital construction fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(e) Purposes of qualified withdrawals

(1) In general

A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

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

Except to the extent provided in regulations prescribed by the Secretary, subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Penalty for failing to fulfill any substantial obligation

Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(f) Tax treatment of qualified withdrawals

(1) Ordering rule

Any qualified withdrawal from a fund shall be treated—

(A) first as made out of the capital account,

(B) second as made out of the capital gain account, and

(C) third as made out of the ordinary income account.

(2) Adjustment to basis of vessel, etc., where withdrawal from ordinary income account

If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) Adjustment to basis of vessel, etc., where withdrawal from capital gain account

If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(4) Adjustment to basis of vessels, etc., where withdrawals pay principal on debt

If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs 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. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) Ordinary income recapture of basis reduction

If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (g)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(g) Tax treatment of nonqualified withdrawals

(1) In general

Except as provided in subsection (h), any withdrawal from a capital construction fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Ordering rule

Any nonqualified withdrawal from a fund shall be treated—

(A) first as made out of the ordinary income account,

(B) second as made out of the capital gain account, and

(C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (f)(4), shall be treated as withdrawn on a last-in-first-out basis.

(3) Operating rules

For purposes of this title—

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) no interest shall be payable under section 6601 and no addition to the tax shall be payable under section 6651,

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act, 1936, as in effect on December 31, 1969.

(4) Interest rate

For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal shall be determined and published jointly by the Secretary of the Treasury or his delegate and the applicable Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(5) Amount not withdrawn from fund after 25 years from deposit taxed as nonqualified withdrawal

(A) In general

The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

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.

(B) Earnings treated as deposits

The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) Amounts committed treated as withdrawn

For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) Authority to treat excess funds as withdrawn

If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) Amounts in fund on January 1, 1987

For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

(6) Nonqualified withdrawals taxed at highest marginal rate

(A) In general

In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 shall be determined—

(i) by excluding such withdrawal from gross income, and

(ii) by increasing the tax imposed by chapter 1 by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation).

In the case of a taxpayer other than a corporation, with respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) applies, the rate of tax taken into account under the preceding sentence shall not exceed 20 percent.

(B) Tax benefit rule

If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 for the taxable year in which such withdrawal occurs.

(C) Coordination with deduction for net operating losses

Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2).

(h) Certain corporate reorganizations and changes in partnerships

Under joint regulations—

(1) a transfer of a fund from one person to another person in a transaction to which section 381 applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

(2) a similar rule shall be applied in the case of a continuation of a partnership.

(i) Definitions

For purposes of this section, any term defined in chapter 535 of title 46, United States Code, which is also used in this section (including the definition of ''Secretary'') shall have the meaning given such term by such chapter as in effect on the date of the enactment of this section.

(Added Pub. L. 99–514, title II, § 261(b), Oct. 22, 1986, 100 Stat. 2208; amended Pub. L. 100–647, title I, §§ 1002(m)(1), 1018(u)(23), Nov. 10, 1988, 102 Stat. 3382, 3591; Pub. L. 101–508, title XI, § 11101(d)(7)(A), 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)(D), May 28, 2003, 117 Stat. 758; Pub. L. 109–304, § 17(e)(6), Oct. 6, 2006, 120 Stat. 1708; Pub. L. 112–240, title I, § 102(c)(1)(D), Jan. 2, 2013, 126 Stat. 2319; Pub. L. 113–295, div. A, title II, § 221(a)(117), Dec. 19, 2014, 128 Stat. 4054; Pub. L. 115–97, title I, § 13001(b)(2)(Q), (7), Dec. 22, 2017, 131 Stat. 2097, 2098; Pub. L. 115–141, div. U, title IV, § 401(a)(352), Mar. 23, 2018, 132 Stat. 1201.)

REFERENCES IN TEXT

Section 606(5) of the Merchant Marine Act, 1936, as in effect on December 31, 1969, referred to in subsec. (g)(3)(C)(iii), was section 606(5) of act June 29, 1936, ch. 858, title VI, 49 Stat. 2004, as amended by acts June 23, 1938, ch. 600, § 22, 52 Stat. 960; July 17, 1952, ch. 939, § 16, 66 Stat. 764; and May 10, 1956, ch. 247, § 1, 70 Stat. 148, which was classified to section 1176(5) of former Title 46, Shipping, and was repealed by Pub. L. 91–469, § 20(4), Oct. 21, 1970, 84 Stat. 1026. Section 606 of the Merchant Marine Act, 1936 was subsequently transferred to section 1176 of the former Appendix to Title 46 and is now set out as a note under section 53101 of Title 46, Shipping.

The date of the enactment of this section, referred to in subsec. (i), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2018—Subsec. (i). Pub. L. 115–141 substituted ''chapter 535 of title 46, United States Code,'' for ''section 607(k) of the Merchant Marine Act, 1936'' and ''such chapter'' for ''such section 607(k)''.

2017—Subsec. (g)(6)(A). Pub. L. 115–97, § 13001(b)(7), in concluding provisions, substituted ''In the case of a taxpayer other than a corporation, with respect to the portion'' for ''With respect to the portion'' and struck out ''(34 percent in the case of a corporation)'' after ''shall not exceed 20 percent''.

Pub. L. 115–97, § 13001(b)(2)(Q), struck out ''or 1201(a)'' after ''section 1(h)'' in concluding provisions.

2014—Subsec. (g)(4). Pub. L. 113–295, which directed substitution of ''any nonqualified withdrawal shall be determined'' for ''any nonqualified withdrawal'' and all that followed through '' 'shall be determined'', was executed by substituting ''any nonqualified withdrawal shall be determined'' for ''any nonqualified withdrawal—

''(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

''(B) made in a taxable year beginning after 1971, shall be determined''

to reflect the probable intent of Congress.

2013—Subsec. (g)(6)(A). Pub. L. 112–240 substituted ''20 percent'' for ''15 percent'' in concluding provisions.

2006—Subsec. (a)(1). Pub. L. 109–304, § 17(e)(6)(A), substituted ''chapter 535 of title 46 of the United States Code'' for ''section 607 of the Merchant Marine Act, 1936''.

Subsecs. (a)(2), (c)(1)(A), (D). Pub. L. 109–304, § 17(e)(6)(B), substituted ''chapter 535 of title 46, United States Code'' for ''section 607 of the Merchant Marine Act, 1936''.

Subsec. (g)(3)(C)(iii). Pub. L. 109–304, § 17(e)(6)(C), substituted ''Merchant Marine Act, 1936,'' for ''Merchant Marine Act of 1936''.

2003—Subsec. (g)(6)(A). Pub. L. 108–27 substituted ''15 percent'' for ''20 percent'' in concluding provisions.

1997—Subsec. (g)(6)(A). Pub. L. 105–34 substituted ''20 percent'' for ''28 percent'' in concluding provisions.

1990—Subsec. (g)(6)(A). Pub. L. 101–508 substituted ''section 1(h)'' for ''section 1(j)'' in last sentence.

1988—Subsec. (g)(1). Pub. L. 100–647, § 1018(u)(23), substituted ''not a qualified withdrawal'' for ''not qualified withdrawal''.

Subsec. (g)(6)(A). Pub. L. 100–647, § 1002(m)(1), substituted ''section 1(j)'' for ''section 1(i)''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

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 this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to taxable years ending on or after May 6, 2003, see section 301(d) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title II, §261(g), Oct. 22, 1986, 100 Stat. 2216, provided that: ''The amendments made by this section [enacting this section and amending section 26 of this title and section 1177 of Title 46, Appendix, Shipping] shall apply to taxable years beginning after December 31, 1986.''

MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS

Pub. L. 99–514, title II, §261(a), Oct. 22, 1986, 100 Stat. 2208, provided that: ''The purpose of this section [enacting this section, amending section 26 of this title and section 1177 of Title 46, Appendix, and enacting provisions set out as a note above] is to coordinate the application of the Internal Revenue Code of 1986 with the capital construction program under the Merchant Marine Act, 1936 [see 46 U.S.C. 53501 et seq.].''

§ 7519. Required payments for entities electing not to have required taxable year

(a) General rule

This section applies to a partnership or S corporation for any taxable year, if—

(1) an election under section 444 is in effect for the taxable year, and

(2) the required payment determined under subsection (b) for such taxable year (or any preceding taxable year) exceeds $500.

(b) Required payment

For purposes of this section, the term ''required payment'' means, with respect to any applicable election year of a partnership or S corporation, an amount equal to—

(1) the excess of the product of—

(A) the applicable percentage of the adjusted highest section 1 rate, multiplied by

(B) the net base year income of the entity, over

(2) the net required payment balance.

For purposes of paragraph (1)(A), the term ''adjusted highest section 1 rate'' means the highest rate of tax in effect under section 1 as of the end of the base year plus 1 percentage point (or, in the case of applicable election years beginning in 1987, 36 percent).

(c) Refund of payments

(1) In general

If, for any applicable election year, the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), the entity shall be entitled to a refund of such excess for such year.

(2) Termination of elections, etc.

If—

(A) an election under section 444 is terminated effective with respect to any year, or

(B) the entity is liquidated during any year, the entity shall be entitled to a refund of the net required payment balance.

(3) Date on which refund payable

Any refund under this subsection shall be payable on the later of—

(A) April 15 of the calendar year following—

(i) in the case of the year referred to in paragraph (1), the calendar year in which it begins,

(ii) in the case of the year referred to in paragraph (2), the calendar year in which it ends, or

(B) the day 90 days after the day on which claim therefor is filed with the Secretary.

(d) Net base year income

For purposes of this section—

(1) In general

An entity's net base year income shall be equal to the sum of—

(A) the deferral ratio multiplied by the entity's net income for the base year, plus

(B) the excess (if any) of—

(i) the deferral ratio multiplied by the aggregate amount of applicable payments made by the entity during the base year, over

(ii) the aggregate amount of such applicable payments made during the deferral period of the base year.

For purposes of this paragraph, the term ''deferral ratio'' means the ratio which the number of months in the deferral period of the base year bears to the number of months in the partnership's or S corporation's taxable year.

(2) Net income

Net income is determined by taking into account the aggregate amount of the following items—

(A) Partnerships

In the case of a partnership, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the partnership's items described in section 702(a) (other than credits and tax-exempt income).

(B) S corporations

In the case of an S corporation, net income shall be the amount (not below zero) deter-