

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1587.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|---|---|
| 53303 | 46 App.:1161(b) (1st sentence words between 6th and 10th commas). | June 29, 1936, ch. 858, title V, §511(b) (1st sentence words between 6th and 10th commas), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subdiv. (a), 57 Stat. 157; July 17, 1952, ch. 939, §9, 66 Stat. 762. |

§ 53304. Vessel ownership

In this chapter, a vessel is deemed to be constructed or acquired by a taxpayer if constructed or acquired by a corporation when the taxpayer owns at least 95 percent of each class of stock of the corporation.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1588.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 53304 | 46 App.:1161(l). | June 29, 1936, ch. 858, title V, §511(l), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108. |

§ 53305. Eligible fund deposits

A construction reserve fund may include deposits of—

- (1) the proceeds from the sale of a vessel;
- (2) indemnities for the loss of a vessel;
- (3) earnings from the operation of a documented vessel and from services incident to the operation; and
- (4) interest or other amounts accrued on deposits in the fund.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1588.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|--|
| 53305 | 46 App.:1161(b) (1st sentence words after 16th comma). | June 29, 1936, ch. 858, title V, §511(b) (1st sentence words after 16th comma), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subdiv. (a), 57 Stat. 157; July 17, 1952, ch. 939, §9, 66 Stat. 762. |

In paragraph (3), the words “documented vessel” are substituted for “vessels documented under the laws of the United States” because of the definition of “documented vessel” in chapter 1 of the revised title.

In paragraph (4), the words “interest or other amounts accrued on deposits in the fund” are substituted for “receipts, in the form of interest or otherwise, with respect to amounts previously deposited” for clarity and to eliminate unnecessary words.

§ 53306. Recognition of gain for tax purposes

(a) DEFINITIONS.—In this section, the terms “net proceeds” and “net indemnity” mean the sum of—

- (1) the adjusted basis of the vessel; and
- (2) the amount of gain the taxpayer would recognize without regard to this section.

(b) RECOGNITION OF GAIN.—In computing net income under the income or excess profits tax laws of the United States, a taxpayer does not

recognize a gain on the sale or the actual or constructive total loss of a vessel if the taxpayer—

- (1) deposits an amount equal to the net proceeds of the sale or the net indemnity for the loss in a construction reserve fund within 60 days after receiving the payment of proceeds or indemnity; and
- (2) elects under this section not to recognize the gain.

(c) WHEN ELECTION MUST BE MADE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the taxpayer must make the election referred to in subsection (b) in the taxpayer’s income tax return for the taxable year in which the gain was realized.

(2) RECEIPT AFTER TAXABLE YEAR.—If the vessel is bought or requisitioned by the United States Government, or is lost, and the taxpayer receives payment for the vessel or indemnity for the loss from the Government after the end of the taxable year in which it was bought, requisitioned, or lost, the taxpayer must make the election referred to in subsection (b) within 60 days after receiving the payment or indemnity, on a form prescribed by the Secretary of the Treasury.

(d) EFFECT OF STATUTE OF LIMITATION.—If the taxpayer makes an election under subsection (c)(2), and computation or recomputation under this section is otherwise allowable but is prevented by a statute of limitation on the date the election is made or within 6 months thereafter, the computation or recomputation nevertheless shall be made notwithstanding the statute if the taxpayer files a claim for the computation or recomputation within 6 months after the date of making the election.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1588.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 53306 | 46 App.:1161(c). | June 29, 1936, ch. 858, title V, §511(c), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subdiv. (b), 57 Stat. 157; Dec. 23, 1944, ch. 714, §1, 58 Stat. 920; July 17, 1952, ch. 939, §10, 66 Stat. 762. |

In subsection (c)(2), the words “in any taxable year beginning after December 31, 1939” are omitted as obsolete. The words “prescribed by the Secretary of the Treasury” are substituted for “prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury” for consistency in the revised title and with other titles of the United States Code. See 26 U.S.C. 7805.

§ 53307. Basis for determining gain or loss and for depreciating new vessels

Under the income or excess profits tax laws of the United States, the basis for determining a gain or loss and for depreciation of a new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or for which purchase-money indebtedness is liquidated as provided in section 53310 of this title, with amounts from a construction reserve fund, shall be reduced by that part of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-

money indebtedness of the new vessel that represents a gain not recognized for tax purposes under section 53306 of this title.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 53307 | 46 App.:1161(d). | June 29, 1936, ch. 858, title V, §511(d), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; July 17, 1952, ch. 939, §11, 66 Stat. 763. |

§ 53308. Order and proportions of deposits and withdrawals

In this chapter—

(1) if the net proceeds of a sale or the net indemnity for a loss is deposited in more than one deposit, the amount consisting of the gain shall be deemed to be deposited first;

(2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and

(3) if a deposit consists in part of a gain not recognized under section 53306 of this title, any expenditure, obligation, or withdrawal applied against that deposit shall be deemed to be a gain in the proportion that the part of the deposit consisting of a gain bears to the total amount of the deposit.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 53308 | 46 App.:1161(e). | June 29, 1936, ch. 858, title V, §511(e), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107. |

§ 53309. Accumulation of deposits

For any taxable year, amounts on deposit in a construction reserve fund on the last day of the taxable year, for which the requirements of section 53310 of this title have been satisfied (to the extent they apply on the last day of the taxable year), are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a)).

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 53309 | 46 App.:1161(f). | June 29, 1936, ch. 858, title V, §511(f), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107. |

The words “are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a))” are substituted for “shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code” because section 102 of the Internal Revenue Code of 1939 has been superseded by part 1 of subchapter G of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 531 et seq.). See also 46 C.F.R. §287.16 (2003).

§ 53310. Obligation of deposits and period for construction of certain vessels

(a) APPLICATION OF SECTIONS 53306 AND 53309.—Sections 53306 and 53309 of this title apply to a deposit in a construction reserve fund only if, within 3 years after the date of the deposit (and any extension under subsection (c))—

(1)(A) a contract is made for the construction or acquisition of a new vessel or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the reconstruction or reconditioning of a new vessel;

(B) the deposit is expended or obligated for expenditure under that contract;

(C) at least 12.5 percent of the construction or contract price of the vessel is paid or irrevocably committed for payment; and

(D) the plans and specifications for the vessel are approved by the Secretary to the extent the Secretary considers necessary; or

(2) the deposit is expended or obligated for expenditure for the liquidation of existing or subsequently incurred purchase-money indebtedness to a person not a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel.

(b) ADDITIONAL REQUIREMENTS FOR CERTAIN VESSELS.—In addition to the requirements of subsection (a)(1), for a vessel not constructed under a construction-differential subsidy contract or not bought from the Secretary of Transportation—

(1) at least 5 percent of the construction (or, if the contract covers more than one vessel, at least 5 percent of the construction of the first vessel) must be completed within 6 months after the date of the construction contract (or within the period of an extension under subsection (c)), as estimated by the Secretary and certified by the Secretary to the Secretary of the Treasury; and

(2) construction under the contract must be completed with reasonable dispatch thereafter.

(c) EXTENSIONS.—The Secretary of Transportation may grant extensions of the period within which the deposits must be expended or obligated or within which the construction must have progressed to the extent of 5 percent completion under this section. However, the extensions may not be for a total of more than 2 years for the expenditure or obligation of deposits or one year for the progress of construction.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1589.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|--------------------------------|--|
| 53310(a) | 46 App.:1161(g) (less (1)(B)). | June 29, 1936, ch. 858, title V, §511(g), (h), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107; June 17, 1943, ch. 130, subdvs. (c), (d), 57 Stat. 158; July 17, 1952, ch. 939, §§12, 13(a), 66 Stat. 763; Pub. L. 86-237, §1, Sept. 8, 1959, 73 Stat. 471; Pub. L. 87-303, §3, Sept. 26, 1961, 75 Stat. 661; Pub. L. 87-782, §1, Oct. 10, 1962, 76 Stat. 796; Pub. L. 88-227, §1, Dec. 23, 1963, 77 Stat. 470; Pub. L. 88-595, §1, Sept. 12, 1964, 78 Stat. 943; Pub. L. 97-31, §12(92), Aug. 6, 1981, 95 Stat. 161. |