

- (2) the deposited gain is withdrawn before the end of that period;
- (3) the construction related to that deposited gain has not progressed to the extent of 5 percent of completion within the appropriate period under section 53310 of this title; or
- (4) the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction related to that deposited gain is not completed with reasonable dispatch.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1590.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53311	46 App.:1161(i).	June 29, 1936, ch. 858, title V, §511(i), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107; July 17, 1952, ch. 939, §13(b), 66 Stat. 764; Pub. L. 97-31, §12(92)(A), Aug. 6, 1981, 95 Stat. 161.

The last sentence of 46 App. U.S.C. 1161(i) is omitted as obsolete.

§ 53312. Assessment and collection of deficiency tax

Notwithstanding any other provision of law, a deficiency in tax for a taxable year resulting from the inclusion of an amount in gross income as provided by section 53311 of this title, and the amount to be treated as a deficiency under section 53311 instead of as an adjustment for the declared value excess profits tax, may be assessed or a civil action may be brought to collect the deficiency without assessment, at any time. Interest on a deficiency or amount to be treated as a deficiency does not begin until the date the deposited gain or part of the deposited gain in question is required to be included in gross income under section 51111.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1590.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53312	46 App.:1161(j).	June 29, 1936, ch. 858, title V, §511(j), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108.

CHAPTER 535—CAPITAL CONSTRUCTION FUNDS

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§ 53501. Definitions

In this chapter:

- (1) AGREEMENT VESSEL.—The term “agreement vessel” means—
 - (A) an eligible vessel or a qualified vessel that is subject to an agreement under this chapter; and
 - (B) a barge or container that is part of the complement of a vessel described in subparagraph (A) if provided for in the agreement.

- (2) ELIGIBLE VESSEL.—The term “eligible vessel” means—

- (A) a vessel—
 - (i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;
 - (ii) documented under the laws of the United States; and
 - (iii) operated in the foreign or domestic trade of the United States or in the fisheries of the United States; and
- (B) a commercial fishing vessel—
 - (i) constructed in the United States and, if reconstructed, reconstructed in the United States;
 - (ii) of at least 2 net tons but less than 5 net tons;
 - (iii) owned by a citizen of the United States;
 - (iv) having its home port in the United States; and
 - (v) operated in the commercial fisheries of the United States.

- (3) JOINT REGULATIONS.—The term “joint regulations” means regulations prescribed jointly by the Secretary and the Secretary of the Treasury under section 53502(b) of this title.

- (4) NONCONTIGUOUS TRADE.—The term “non-contiguous trade” means—

- (A) trade between—
 - (i) one of the contiguous 48 States; and
 - (ii) Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and
- (B) trade between—
 - (i) a place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and
 - (ii) another place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States.

- (5) QUALIFIED VESSEL.—The term “qualified vessel” means—

- (A) a vessel—
 - (i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the

United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) agreed, between the Secretary and the person maintaining the capital construction fund established under section 53503 of this title, to be operated in the United States foreign, Great Lakes, non-contiguous domestic, or short sea transportation trade¹ or in the fisheries of the United States; and

(B) a commercial fishing vessel—

(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) of at least 2 net tons but less than 5 net tons;

(iii) owned by a citizen of the United States;

(iv) having its home port in the United States; and

(v) operated in the commercial fisheries of the United States.

(6) SECRETARY.—The term “Secretary” means—

(A) the Secretary of Commerce with respect to an eligible vessel or a qualified vessel operated or to be operated in the fisheries of the United States; and

(B) the Secretary of Transportation with respect to other vessels.

(7)² SHORT SEA TRANSPORTATION TRADE.—The term “short sea transportation trade” means the carriage by vessel of cargo—

(A) that is—

(i) contained in intermodal cargo containers and loaded by crane on the vessel; or

(ii) loaded on the vessel by means of wheeled technology; and

(B) that is—

(i) loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or

(ii) loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States.

(7)² UNITED STATES FOREIGN TRADE.—The term “United States foreign trade” includes those areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.

(8) VESSEL.—The term “vessel” includes—

(A) cargo handling equipment that the Secretary determines is intended for use primarily on the vessel; and

(B) an ocean-going towing vessel, an ocean-going barge, or a comparable towing vessel or barge operated on the Great Lakes.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1591; Pub. L. 110-140, title XI, §1122(a), Dec. 19, 2007, 121 Stat. 1762.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53501(1)	46 App.:1177(b)(3), (k)(3).	June 29, 1936, ch. 858, title VI, §607(b)(3), (k)(1)-(3), (5)-(9), 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, 1031, 1032; Pub. L. 93-116, Oct. 1, 1973, 87 Stat. 421; Pub. L. 97-31, §12(97), Aug. 6, 1981, 95 Stat. 162.
53501(2)	46 App.:1177(k)(1), 46 App.:1177-1.	Pub. L. 94-455, title VIII, §807, Oct. 4, 1976, 90 Stat. 1606.
53501(3)	46 App.:1177(k)(6).	
53501(4)	46 App.:1177(k)(8).	
53501(5)	46 App.:1177(k)(1) (last sentence), (2), 46 App.:1177-1.	
53501(6)	46 App.:1177(k)(9).	
53501(7)	46 App.:1177(k)(5).	
53501(8)	46 App.:1177(k)(7).	

The codification of the laws in this chapter is not intended to alter the existing jurisdictional relationship of the Secretaries who administer those laws.

In paragraph (2)(A)(iii), the word “trade” is substituted for “commerce” for consistency in the chapter.

REFERENCES IN TEXT

Section 506 of the Merchant Marine Act, 1936, referred to in par. (7), is section 506 of act June 29, 1936, ch. 858, 49 Stat. 1985, which is set out as a note under section 53101 of this title.

AMENDMENTS

2007—Par. (5)(A)(iii). Pub. L. 110-140, §1122(a)(1), substituted “noncontiguous domestic, or short sea transportation trade” for “or noncontiguous domestic”.

Par. (7). Pub. L. 110-140, §1122(a)(2), added par. (7) relating to short sea transportation trade.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§ 53502. Regulations

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall prescribe regulations to carry out this chapter.

(b) TAX LIABILITY.—The Secretary and the Secretary of the Treasury shall prescribe joint regulations for the determination of tax liability under this chapter.

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

¹ So in original.

² So in original. Two pars. (7) have been enacted.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53502	46 App.:1177(l) (2d sentence).	June 29, 1936, ch. 858, title VI, § 607(l) (2d 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. 1032; Pub. L. 97-31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.

Subsection (a) is added for clarity because various provisions of the source language for this chapter imply that the Secretary is to prescribe regulations individually (except for regulations affecting a determination of tax liability). See, e.g., 46 App. U.S.C. 1177(a) (last sentence), (f)(1) (last sentence), and (l) (last sentence).

In subsection (b), the words “not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate” are omitted as surplus.

§ 53503. Establishing a capital construction fund

(a) IN GENERAL.—A citizen of the United States owning or leasing an eligible vessel may make an agreement with the Secretary under this chapter to establish a capital construction fund for the vessel.

(b) ALLOWABLE PURPOSE.—The purpose of the agreement shall be to provide replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation trade or in the fisheries of the United States.

(Pub. L. 109-304, § 8(c), Oct. 6, 2006, 120 Stat. 1593; Pub. L. 110-140, title XI, § 1122(b), Dec. 19, 2007, 121 Stat. 1762.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53503(a)	46 App.:1177(a) (1st sentence).	June 29, 1936, ch. 858, title VI, § 607(a) (1st sentence), (2d sentence related to purpose), 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. 1026; Pub. L. 97-31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.
53503(b)	46 App.:1177(a) (2d sentence related to purpose).	

AMENDMENTS

2007—Subsec. (b). Pub. L. 110-140 substituted “noncontiguous domestic, or short sea transportation trade” for “or noncontiguous domestic trade”.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§ 53504. Deposits and withdrawals

(a) REQUIRED DEPOSITS.—An agreement to establish a capital construction fund shall provide for the deposit in the fund of the amounts agreed to be appropriate to provide for qualified withdrawals under section 53509 of this title.

(b) APPLICABLE REQUIREMENTS.—Deposits in and withdrawals from the fund are subject to the requirements included in the agreement or prescribed by the Secretary by regulation. However, the Secretary may not require a person to deposit in the fund for a taxable year more than 50 percent of that portion of the person’s taxable income for that year (as determined under section 53505(a)(1) of this title) that is attributable to the operation of an agreement vessel.

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53504(a)	46 App.:1177(a) (2d sentence related to deposits).	June 29, 1936, ch. 858, title VI, § 607(a) (2d sentence related to deposits), (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. 1026; Pub. L. 97-31, § 12(97)(A), Aug. 6, 1981, 95 Stat. 162.
53504(b)	46 App.:1177(a) (last sentence).	

In subsection (a), the words “agreed to be appropriate” are substituted for “agreed upon as necessary or appropriate” to eliminate unnecessary words.

§ 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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

If the amount remains in the fund at the close of the—	The applicable percentage is—
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) of such Code (26 U.S.C. 1(h), 1201(a)) applies, the tax rate used under paragraph (1)(B) may not exceed 15 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.)

AMENDMENT OF SUBSECTION (f)(2)

Subsection (f)(2) of this section was derived from the last paragraph of section 1177(h)(6)(A) of the former Appendix to this title, which was amended by section 301(a)(2)(E) of Pub. L. 108-27 by substituting “15 percent” for “20 percent”. Section 303 of Pub. L. 108-27, as amended by section 102 of Pub. L. 109-222 and section 102(a) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of Title 26, Internal Revenue Code, provided that such amendment shall not apply to taxable years beginning after December 31, 2012, and that the Internal Revenue Code of 1986 shall be applied and administered to such years as if the amendment had never been enacted. For applicability of section 303 of Pub. L. 108-27 to subsection (f)(2) of this section, see section 3528 of Pub. L. 110-181, set out as an Application of Sunset Provision to Subsection (f)(2) note below and section 18(c), (d) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

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.

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, 26 U.S.C. 1 note), the amend-

ment 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.”

§ 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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53515	46 App.:1177(l) (1st sentence).	June 29, 1936, ch. 858, title VI, §607(l) (1st 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. 1032; Pub. L. 97–31, §12(97)(A), Aug. 6, 1981, 95 Stat. 162.

§ 53516. Termination of agreement after change in regulations

If, after an agreement has been made under this chapter, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this chapter that could have a substantial effect on the rights or duties of a person maintaining a fund under this chapter, that person may terminate the agreement.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1600.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 53516, 46 App.:1177(l) (last sentence), June 29, 1936, ch. 858, title VI, §607(l) (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. 1032; Pub. L. 97-31, §12(97)(A), Aug. 6, 1981, 95 Stat. 162.

§ 53517. Reports

(a) IN GENERAL.—Within 120 days after the close of each calendar year, the Secretary of Transportation and the Secretary of Commerce each shall provide the Secretary of the Treasury a written report on the capital construction funds under the particular Secretary’s jurisdiction for the calendar year.

(b) CONTENTS.—The report shall state the name and taxpayer identification number of each person—

- (1) establishing a capital construction fund during the calendar year;
(2) maintaining a capital construction fund on the last day of the calendar year;
(3) terminating a capital construction fund during the calendar year;
(4) making a deposit to or withdrawal from a capital construction fund during the calendar year, and the amount of the deposit or withdrawal; or
(5) having been determined during the calendar year to have failed to fulfill a substantial obligation under a capital construction fund agreement to which the person is a party.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1600.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 53517, 46 App.:1177(m), June 29, 1936, ch. 858, title VI, §607(m), as added Pub. L. 99-514, §261(d), Oct. 22, 1986, 100 Stat. 2214.

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AMENDMENTS

2008—Pub. L. 110-181, div. C, title XXXV, § 3522(a)(10)(A), Jan. 28, 2008, 122 Stat. 598, inserted “or Administrator” after “Secretary” in items 53722 and 53723.

SUBCHAPTER I—GENERAL

§ 53701. Definitions

In this chapter:

(1) ACTUAL COST.—The term “actual cost” means the sum of—

(A) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 53715(d)(1) of this title; and

(B) all amounts that the Secretary or Administrator reasonably estimates the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 53714 of this title in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.

(2) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Maritime Administration.

(3) CONSTRUCTION, RECONSTRUCTION, AND RECONDITIONING.—The terms “construction”, “reconstruction”, and “reconditioning” include designing, inspecting, outfitting, and equipping.

(4) DEPRECIATED ACTUAL COST.—The term “depreciated actual cost” of a vessel means—