

(4) **DEFINITIONS.**—For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

Subtitle G—Merchant Marine Capital Construction Funds

SEC. 261. PROVISIONS RELATING TO MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.

(a) **PURPOSE.**—The purpose of this section is to coordinate the application of the Internal Revenue Code of 1986 with the capital construction program under the Merchant Marine Act, 1936.

(b) **AMENDMENT OF 1986 CODE.**—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

“SEC. 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 section 607 of the Merchant Marine Act, 1936 (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 section 607 of the Merchant Marine Act, 1936, 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 section 607 of the Merchant Marine Act, 1936) 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 section 607 of the Merchant Marine Act, 1936, 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 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 of 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—

“(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 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).

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(i) or 1201(a) applies, the rate of tax taken into account under the preceding sentence shall not exceed 28 percent (34 percent in the case of a corporation).

"(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 section 607(k) of the Merchant Marine Act, 1936 which is also used in this section (including the definition of ‘Secretary’) shall have the meaning given such term by such section 607(k) as in effect on the date of the enactment of this section.”

(c) CREDITS NOT ALLOWED AGAINST INCREASE IN TAX.—Paragraph (2) of section 26(b) is amended by striking out “and” at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new subparagraph:

“(I) subparagraph (A) of section 7518(g)(6) (relating to nonqualified withdrawals from capital construction funds taxed at highest marginal rate).”

(d) DEPARTMENTAL REPORTS AND CERTIFICATION.—Section 607 of the Merchant Marine Act, 1936, is amended by adding at the end thereof the following new subsection:

“(m) DEPARTMENTAL REPORTS AND CERTIFICATION.—

“(1) IN GENERAL.—For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

“(2) CONTENTS OF REPORTS.—Each report shall set forth the name and taxpayer identification number of each person—

“(A) establishing a capital construction fund during such calendar year;

“(B) maintaining a capital construction fund as of the last day of such calendar year;

“(C) terminating a capital construction fund during such calendar year;

“(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

“(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.”

(e) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 607(d)(1) of the Merchant Marine Act, 1936 is amended by inserting “and section 7518 of such Code” after “this section”.

(2) Subparagraph (D) of section 607(d)(1) of such Act is amended by inserting “and section 7518 of such Code” after “this section”.

(3) Subparagraph (C) of section 607(e)(2) of such Act is amended by striking out “85 percent” and inserting in lieu thereof “the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986”.

(4) Subparagraph (E) of section 607(e)(4) of such Act is amended to read as follows:

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

(5) Paragraph (3) of section 607(g) of such Act is amended to read as follows:

“(3) 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.”

(6) Subsection (h) of section 607 of such Act is amended by adding at the end thereof the following new paragraphs:

“(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 of the Internal Revenue Code of 1986 shall be determined—

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

“(ii) by increasing the tax imposed by chapter 1 of such Code 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) of such Code.

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(i) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed 28 percent (34 percent in the case of a corporation).

“(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 of such Code 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) of the Internal Revenue Code of 1986.”

(f) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

“Sec. 7518. Tax incentives relating to merchant marine capital construction funds.”

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

TITLE III—CAPITAL GAINS

Subtitle A—Individual Capital Gains

SEC. 301. REPEAL OF EXCLUSION FOR LONG-TERM CAPITAL GAINS OF INDIVIDUALS.

(a) IN GENERAL.—Section 1202 (relating to deduction for capital gains) is hereby repealed.