

Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary of Transportation or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary of Transportation shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary of Transportation under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

§ 391.1 Scope of section 607 of the Act and the regulations in this part.

(a) *In general.* The regulations prescribed in this part provide rules for determining the income tax liability of any person a party to an agreement with the Secretary of Transportation establishing a capital construction fund (for purposes of this part referred to as the “fund”) authorized by section 607 of the Merchant Marine Act, 1936, as amended (for purposes of this part referred to as the “Act”). With respect to such parties, section 607 of the Act in general provides for the nontaxability of certain deposits of money or other property into the fund out of earnings or gains realized from the operation of vessels covered in an agreement, gains realized from the sale or other disposition of agreement vessels or proceeds from insurance for indemnification for loss of agreement vessels, earnings from the investment or reinvestment of amounts held in a fund, and gains with respect to amounts or deposits in the fund. Transitional rules are also provided for the treatment of “old funds” existing on or before the effective date of the Merchant Marine Act of 1970 (see § 391.10).

(b) *Cross references.* For rules relating to eligibility for a fund, deposits, and withdrawals and other aspects, see the regulations prescribed by the Secretary of Transportation in title 46 (Merchant Marine) and by the Secretary of Commerce in title 50 (Fisheries) of the Code of Federal Regulations.

(c) *Code.* For purposes of this part, the term *Code* means the Internal Revenue Code of 1954, as amended.

§ 391.2 Ceiling on deposits.

(a) *In general*—(1) *Total ceiling.* Section 607(b) of the Act provides a ceiling on the amount which may be deposited by a party for a taxable year pursuant to an agreement. The amount which a party may deposit into a fund may not exceed the sum of the following subceilings:

(i) The lower of (a) the taxable income (if any) of the party for such year (computed as provided in chapter 1 of the Code but without regard to the carryback of any net operating loss or net capital loss and without regard to section 607 of the Act) or (b) taxable income (if any) of such party for such year attributable under paragraph (b) of this section to the operation of agreement vessels (as defined in paragraph (f) of this section) in the foreign or domestic commerce of the United States or in the fisheries of the United States (see section 607(b)(1)(A) of the Act),

(ii) Amounts allowable as a deduction under section 167 of the Code for such year with respect to the agreement vessels (see section 607(b)(1)(B) of the Act),

(iii) The net proceeds (if not included in paragraph (a)(i) of this section) from (a) the sale or other disposition of any agreement vessels or (b) insurance or indemnity attributable to any agreement vessels (see section 607(b)(1)(C) of the Act and paragraph (c) of this section), and

(iv) Earnings and gains from the investment or reinvestment of amounts held in such fund (see section 607(b)(1)(D) of the Act and paragraphs (d) and (g) of this section).

(2) *Overdeposits.* (i) If for any taxable year an amount is deposited into the fund under a subceiling computed under paragraph (a)(1) of this section which is in excess of the amount of such subceiling for such year, then at the party’s option such excess (or any portion thereof) may—

(a) Be treated as a deposit into the fund for that taxable year under another available subceiling, or