

**TITLE 26 - INTERNAL REVENUE CODE**

**Subtitle A - Income Taxes**

**CHAPTER 1 - NORMAL TAXES AND SURTAXES**

**Subchapter R - Election To Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate**

**§ 1355. Definitions and special rules**

**(a) Definitions**

For purposes of this subchapter—

**(1) Electing corporation**

The term “electing corporation” means any corporation for which an election is in effect under this subchapter.

**(2) Electing group; controlled group**

**(A) Electing group**

The term “electing group” means a controlled group of which one or more members is an electing corporation.

**(B) Controlled group**

The term “controlled group” means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52 (a) did not apply.

**(3) Qualifying vessel operator**

The term “qualifying vessel operator” means any corporation—

**(A)** who operates one or more qualifying vessels, and

**(B)** who meets the shipping activity requirement in subsection (c).

**(4) Qualifying vessel**

The term “qualifying vessel” means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 6,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

**(5) United States flag vessel**

The term “United States flag vessel” means any vessel documented under the laws of the United States.

**(6) United States domestic trade**

The term “United States domestic trade” means the transportation of goods or passengers between places in the United States.

**(7) United States foreign trade**

The term “United States foreign trade” means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

**(b) Operating a vessel**

For purposes of this subchapter—

**(1) In general**

Except as provided in paragraph (2), a person is treated as operating any vessel during any period if—

**(A) (i)** such vessel is owned by, or chartered (including a time charter) to, the person, or

- (ii) the person provides services for such vessel pursuant to an operating agreement, and
- (B) such vessel is in use as a qualifying vessel during such period.

**(2) Bareboat charters**

A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

- (A) (i) the vessel is temporarily surplus to the person's requirements and the term of the charter does not exceed 3 years, or
- (ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and
- (B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

**(c) Shipping activity requirement**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

**(2) Special rule for 1st year of election**

A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354 (a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

**(3) Controlled groups**

A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined by treating all members of such group as 1 person.

**(4) Requirement**

The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

**(d) Activities carried on partnerships, etc.**

In applying this subchapter to a partner in a partnership—

- (1) each partner shall be treated as operating vessels operated by the partnership,
- (2) each partner shall be treated as conducting the activities conducted by the partnership, and
- (3) the extent of a partner's ownership, charter, or operating agreement interest in any vessel operated by the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

**(e) Effect of temporarily ceasing to operate a qualifying vessel**

**(1) In general**

For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

- (A) that it has temporarily ceased to operate the qualifying vessel, and
- (B) its intention to resume operating the qualifying vessel.

**(2) Notice**

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

**(3) Period disregard in effect**

The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

- (A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or
- (B) the electing corporation resumes operation of the qualifying vessel.

**(f) Effect of temporarily operating a qualifying vessel in the United States domestic trade****(1) In general**

For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

- (A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and
- (B) its intention to resume operation of the vessel in the United States foreign trade.

**(2) Notice**

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

**(3) Period disregard in effect**

The period of temporary use under paragraph (1) continues until the earlier of the date of<sup>1</sup> which—

- (A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or
- (B) the electing corporation resumes operation of the vessel in the United States foreign trade.

**(4) No disregard if domestic trade use exceeds 30 days**

Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

**(g) Great Lakes domestic shipping to not disqualify vessel****(1) In general**

If the electing corporation elects (at such time and in such manner as the Secretary may require) to apply this subsection for any taxable year to any qualifying vessel which is used in qualified zone domestic trade during the taxable year—

- (A) solely for purposes of subsection (a)(4), such use shall be treated as use in United States foreign trade (and not as use in United States domestic trade), and
- (B) subsection (f) shall not apply with respect to such vessel for such taxable year.

**(2) Effect of temporarily operating vessel in United States domestic trade**

In the case of a qualifying vessel to which this subsection applies—

**(A) In general**

An electing corporation shall be treated as using such vessel in qualified zone domestic trade during any period of temporary use in the United States domestic trade (other than qualified zone domestic trade) if the electing corporation gives timely notice to the Secretary stating—

- (i) that it temporarily operates or has operated in the United States domestic trade (other than qualified zone domestic trade) a qualifying vessel which had been used in the United States foreign trade or qualified zone domestic trade, and
- (ii) its intention to resume operation of the vessel in the United States foreign trade or qualified zone domestic trade.

**(B) Notice**

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

**(C) Period disregard in effect**

The period of temporary use under subparagraph (A) continues until the earlier of the date of which—

- (i) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade or qualified zone domestic trade, or
- (ii) the electing corporation resumes operation of the vessel in the United States foreign trade or qualified zone domestic trade.

**(D) No disregard if domestic trade use exceeds 30 days**

Subparagraph (A) shall not apply to any qualifying vessel which is operated in the United States domestic trade (other than qualified zone domestic trade) for more than 30 days during the taxable year.

**(3) Allocation of income and deductions to qualifying shipping activities**

In the case of a qualifying vessel to which this subsection applies, the Secretary shall prescribe rules for the proper allocation of income, expenses, losses, and deductions between the qualified shipping activities and the other activities of such vessel.

**(4) Qualified zone domestic trade**

For purposes of this subsection—

**(A) In general**

The term “qualified zone domestic trade” means the transportation of goods or passengers between places in the qualified zone if such transportation is in the United States domestic trade.

**(B) Qualified zone**

The term “qualified zone” means the Great Lakes Waterway and the St. Lawrence Seaway.

**(h) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

**Footnotes**

<sup>1</sup> So in original.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1452; amended Pub. L. 109–135, title IV, § 403(g)(1)(B)–(2), Dec. 21, 2005, 119 Stat. 2624; Pub. L. 109–222, title II, § 205(a), May 17, 2006, 120 Stat. 350; Pub. L. 109–432, div. A, title IV, §§ 413(a), 415 (a), Dec. 20, 2006, 120 Stat. 2963.)

**Amendments**

2006—Subsec. (a)(4). Pub. L. 109–432, § 413(a), substituted “6,000” for “10,000 (6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)”.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

Pub. L. 109–222 inserted “(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)” after “10,000”.

Subsecs. (g), (h). Pub. L. 109–432, § 415(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2005—Subsec. (a)(8). Pub. L. 109–135, § 403(g)(1)(B), struck out heading and text of par. (8). Text read as follows: “The term ‘charter’ includes an operating agreement.”

Subsec. (b)(1). Pub. L. 109–135, § 403(g)(1)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

“(A) owned by, or chartered (including a time charter) to, the person, and

“(B) is in use as a qualifying vessel during such period.”

Subsec. (c)(3). Pub. L. 109–135, § 403(g)(2), substituted “determined by treating all members of such group as 1 person.” for “determined—

“(A) by treating all members of such group as 1 person, and

“(B) by disregarding vessel charters between members of such group.”

Subsec. (d)(3). Pub. L. 109–135, § 403(g)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “the extent of a partner’s ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner’s interest in the partnership.”

### **Effective Date of 2006 Amendment**

Pub. L. 109–432, div. A, title IV, § 413(b), Dec. 20, 2006, 120 Stat. 2963, provided that: “The amendment made by this section [amending this section] shall take effect as if included in section 205 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].”

Pub. L. 109–432, div. A, title IV, § 415(b), Dec. 20, 2006, 120 Stat. 2965, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2006].”

Pub. L. 109–222, title II, § 205(b), May 17, 2006, 120 Stat. 350, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.”

### **Effective Date of 2005 Amendment**

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.