

Maritime Administration, DOT

§ 287.2

SOURCE: General Order 38 (2d Rev.), 30 FR 7215, May 29, 1965; 30 FR 8162, June 25, 1965, unless otherwise noted.

EDITORIAL NOTE: The regulations contained in this part were codified by the Internal Revenue Service in Treasury Decision 6820, 30 FR 6030, Apr. 29, 1965. For text see also 26 CFR part 2.

§ 287.1 Definitions.

(a) As used in the regulations in this part, except as otherwise expressly provided—

(1) *Act* means the Merchant Marine Act, 1936, as amended (46 U.S.C., ch. 27).

(2) *Section* means one of the sections of the regulations in this part.

(3) *Administration* means the Maritime Administration of the Department of Transportation.

(4) *Citizen* means a person who, if an individual, was born or naturalized as a citizen of the United States or, if other than an individual, meets the requirements of section 905(c) of the Act and section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802).

(5) *Taxpayer* means a citizen who has established or seeks to establish a construction reserve fund under the provisions of section 511 of the Act and the regulations in this part, and may include a partnership.

(6) *Corporation* includes associations, joint-stock companies and insurance companies.

(7) *Stock* includes the shares in an association, joint-stock company, or insurance company.

(8) *Affiliate* or *associate* means a person directly or indirectly controlling, controlled by, or under common control with, another person.

(9) *Control*, as used in paragraph (a)(8) of this section, means the possession of the power to direct in any manner the management and policies of a person, and the terms *controlling* and *controlled* shall have the meanings correlative to the foregoing.

(10) *Person* means an individual, a corporation, a partnership, an association, an estate, a trust, or a company.

(11) *Partnership* includes a syndicate, group, pool, joint venture, or other unincorporated organization.

(12) *Construction*, if so determined by the Administration, shall include reconstruction and reconditioning.

(13) *Reconstruction and reconditioning* shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Administration determines that the objectives of the Act will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a *new vessel* within the meaning of section 511 of the Act for such reconstruction, reconditioning, or modernization.

(14) *Purchase-money indebtedness* means any indebtedness, or evidence thereof, created as the result of the purchase of a vessel by the taxpayer.

(15) *Contract, contract for the construction, and construction contract* shall include, if so determined by the Administration, a contract for reconstruction or reconditioning and shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement, between such taxpayer and the Administration with respect to such construction, and containing provisions deemed necessary or advisable by the Administration to carry out the purposes and policy of section 511 of the Act.

(b) Insofar as the computation and collection of taxes are concerned, other terms used in the regulations in this part, except as otherwise provided, have the same meaning as in the Internal Revenue Code and the regulations thereunder.

§ 287.2 Scope of section 511 of the Act and the regulations in this part.

(a) *Applicability of regulations.* The regulations prescribed in this part—

(1) Apply to gain realized from the sale or loss of vessels, earnings from the operation of vessels, and interest (or otherwise) with respect to amounts previously deposited in the construction reserve fund, for a taxable year beginning after December 31, 1964, and

(2) Apply to the expenditure, obligation, or withdrawal, during a taxable year beginning after December 31, 1964, of any deposits of gain, earnings, and interest (or otherwise) of the character referred to in paragraph (a)(1) of this

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section without regard to the taxable year in which the deposits were made.

(b) *Nonrecognition and accumulation.* Section 511 of the Act provides, under conditions specified, for the nonrecognition, for income and excess-profits tax purposes, of the gain realized from the sale or indemnification for loss of certain vessels including certain vessels in the course of construction, or shares therein. It also permits the accumulation of the proceeds of such sales or indemnification and of certain earnings without liability under part I (section 531 and following), subchapter G, chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder (26 CFR 1.531 through 1.537-1 (Income Tax Regulations)).

(c) *Availability of benefits.* The benefits of section 511 of the Act are available to any citizen as defined in paragraph (a)(4) of §287.1, who, during any taxable year owns, in whole or in part, a vessel or vessels within the scope of §287.3. A citizen operating such a vessel or vessels owned by any other person or persons can derive no benefit from the provisions relating to the nonrecognition of gain from the sale or loss of such vessel or vessels so owned, but may establish a construction reserve fund in which he may deposit earnings from the operation of such vessel or vessels.

(d) *Applicability of section 511.* Section 511 of the Act applies only with respect to sales or losses of vessels within the scope of §287.3 or in respect of earnings derived from the operation of such vessels. A loss to be within section 511 of the Act must be an actual or constructive total loss. Whether there is a total loss, actual or constructive, will be determined by the Administration.

§ 287.3 Requirements as to vessel operations.

Section 511 of the Act applies with respect to vessels operated in the foreign or domestic commerce of the United States or in the fisheries of the United States and vessels acquired or being constructed for the purpose of such operation. The foreign commerce of the United States includes commerce or trade between the United States (including the District of Columbia), the territories and possessions

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which are embraced within the coastwise laws, and a foreign country or other territories and possessions of the United States. The domestic commerce of the United States includes commerce or trade between ports of the United States and its territories and possessions, embraced within the coastwise laws and on inland rivers. The fisheries include the fisheries of the United States and its territories and possessions. Section 511 of the Act does not apply to vessels operated in the foreign commerce or fisheries of any country other than the United States.

§ 287.4 Application to establish fund.

(a) Any person claiming to be entitled to the benefits of section 511 of the Act may make application, in writing, to the Administration for permission to establish a construction reserve fund. The original application shall be executed and verified by the taxpayer, or if the taxpayer is a corporation, by one of its principal officers, in triplicate, and shall be accompanied by eight conformed copies when filed with the Administration.

(b) Form of application:

APPLICATION FOR PERMISSION TO ESTABLISH A CONSTRUCTION RESERVE FUND UNDER SEC. 511, MERCHANT MARINE ACT, 1936, AS AMENDED

The undersigned applicant, _____, hereby applies, under section 511, Merchant Marine Act, 1936, as amended, and the regulations prescribed by the Secretary of Transportation acting by and through the Maritime Administrator (hereinafter referred to as "Administrator") (46 CFR Part 287) and the Secretary of the Treasury, Internal Revenue Service (26 CFR Part 2) for permission to establish a construction reserve fund to be used for the construction or acquisition of a new vessel or vessels as defined by subsection (a) of said section 511, and submits in support of its application the following information:

A. Identity and nationality of applicant.

1. Exact name.
2. Status (individual, partnership, corporation, etc.).
3. Give the place of incorporation—whether under the laws of the United States, or of a State, Territory, District, or possession thereof.
4. Address of principal executive offices.
5. A statement, if applicant is an individual or a partnership, should be attached