

103D CONGRESS
1ST SESSION

H. R. 2152

To amend the Merchant Marine Act, 1936 to encourage merchant marine investment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1993

Mr. STUDDS (for himself, Mr. LIPINSKI, Mr. FIELDS of Texas, Mr. BATEMAN, Mr. YOUNG of Alaska, Mr. HUGHES, Mr. HUTTO, Mr. TAUZIN, Mr. ORTIZ, Mr. MANTON, Mr. PICKETT, Mr. HOCHBRUECKNER, Mr. PALLONE, Mrs. UNSOELD, Mr. LANCASTER, Mr. ANDREWS of Maine, Mr. GENE GREEN of Texas, Mr. HASTINGS, Mr. HAMBURG, Mr. STUPAK, Mr. THOMPSON of Mississippi, Mr. ACKERMAN, and Mr. KING) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Ways and Means

A BILL

To amend the Merchant Marine Act, 1936 to encourage merchant marine investment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Merchant Marine
5 Investment Act of 1993”.

1 **SEC. 2. AMENDMENTS OF MERCHANT MARINE ACT, 1936.**

2 (a) CHANGES IN VESSELS TO WHICH CAPITAL CON-
3 STRUCTION FUNDS APPLY.—

4 (1) The second sentence of section 607(a) of
5 the Merchant Marine Act, 1936 (46 App. U.S.C.
6 1177) is amended to read as follows: “Any agree-
7 ment entered into under this section shall be for the
8 purpose of providing replacement vessels, additional
9 vessels, or reconstructed vessels, built in the United
10 States and documented under the laws of the United
11 States for operation in the foreign or domestic com-
12 merce of the United States or in the fisheries of the
13 United States and shall provide for the deposit in
14 the fund of the amounts agreed upon as necessary
15 or appropriate to provide for qualified withdrawals
16 under subsection (f).”

17 (2) Paragraph (1) of section 607(k) of such Act
18 (defining eligible vessel) is amended to read as fol-
19 lows:

20 “(1) The term ‘eligible vessel’ means any ves-
21 sel—

22 “(A) documented under the laws of the
23 United States, and

24 “(B) operated in the foreign or domestic
25 commerce of the United States or in the fish-
26 eries of the United States.”

1 (3) Paragraph (2) of section 607(k) of such Act
2 is amended by striking subparagraph (C) and insert-
3 ing the following:

4 “(C) which the person maintaining the
5 fund agrees with the Secretary will be operated
6 in the foreign or domestic commerce of the
7 United States or in the fisheries of the United
8 States.

9 Such term shall not include any towing vessel,
10 barge, or dry or liquid bulk vessel operated on the
11 inland waterways of the United States.”

12 (4) Subsection (f) of section 607 of such Act is
13 amended by adding at the end thereof the following
14 new paragraph:

15 “(3) For purposes of this subsection, the deter-
16 mination of whether any withdrawal from amounts
17 in any capital construction fund as of the date of the
18 enactment of the Merchant Marine Investment Act
19 of 1993 (or from earnings thereon) is a qualified
20 withdrawal shall be made using the definition of
21 ‘qualified vessel’ as in effect on the day before such
22 date of the enactment.”

23 (5) Subsection (k) of section 607 of such Act
24 is amended by adding at the end thereof the follow-
25 ing new paragraphs:

1 “(10) The term ‘inland waterways of the Unit-
2 ed States’ means any inland waterway of the United
3 States which is described in section 206 of the In-
4 land Waterways Revenue Act of 1978 (33 U.S.C.
5 1804).

6 “(11) The terms ‘foreign commerce’ and ‘for-
7 eign trade’ have the meanings given such terms in
8 section 905, except that such terms shall include
9 commerce or trade between foreign ports.”

10 (6) Paragraph (7) of section 607(k) of such Act
11 is amended by inserting “containers or barges in-
12 tended for use as part of the complement of 1 or
13 more qualified vessels and” before “cargo handling”.

14 (b) TREATMENT OF FUND EARNINGS.—

15 (1) Section 607 of such Act is amended by add-
16 ing at the end thereof the following new subsection:

17 “(n) TAXATION OF EARNINGS ON INVESTMENTS.—

18 “(1) IN GENERAL.—The tax imposed by chap-
19 ter 1 of the Internal Revenue Code of 1986 shall be
20 determined—

21 “(A) by excluding from gross income the
22 taxable earnings from the investment and rein-
23 vestment of amounts held in a capital construc-
24 tion fund, and

1 “(B) by increasing the tax imposed by
2 such chapter by the product of the amount of
3 such taxable earnings and the highest rate of
4 tax specified in section 1 (section 11 in the case
5 of a corporation) of such Code.

6 “(2) MAXIMUM RATE ON CAPITAL GAINS.—If
7 there is a net capital gain on amounts held in a cap-
8 ital construction fund, the rate of tax taken into ac-
9 count under paragraph (1)(B) with respect to such
10 gain shall not exceed the rate applicable to net cap-
11 ital gain under section 1(h) or 1201(a) of such
12 Code, as the case may be.

13 “(3) COORDINATION WITH DEDUCTION FOR
14 NET OPERATING LOSSES.—Any earnings excluded
15 from gross income under paragraph (1) shall be ex-
16 cluded in determining taxable income under section
17 172(b)(2) of such Code.

18 “(4) TAXABLE EARNINGS.—For purposes of
19 this section, the term ‘taxable earnings’ means net
20 earnings determined with the following modifica-
21 tions:

22 “(A) There shall be excluded interest in-
23 come exempt from taxation under section 203
24 of such Code.

1 “(B) If the person maintaining the fund is
2 a corporation, there shall be excluded the per-
3 centage applicable under section 243(a)(1) of
4 such Code of any dividend received by the fund
5 with respect to which such person would (but
6 for paragraph (1)(A)) be allowed a deduction
7 under section 243 of such Code.

8 “(C) Losses from the sale or exchange of
9 capital assets shall be allowed only to the extent
10 of gains from such sales or exchanges.

11 “(D) There shall be excluded—

12 “(i) earnings on amounts deposited in
13 the fund which are attributable to vessels
14 documented under the laws of the United
15 States for operation in the fisheries of the
16 United States, and

17 “(ii) earnings on earnings described in
18 clause (i).”

19 (2) Subparagraph (D) of section 607(b)(1) of
20 such Act is amended by inserting “reduced by the
21 tax imposed on such receipts under subsection (n)”
22 after “in such fund”.

23 (3) Subparagraph (C) of section 607(d)(1) of
24 such Act is amended by striking “shall not be taken

1 into account” and inserting “shall be taken into ac-
2 count as provided in subsection (n)”.

3 (4) Paragraph (2) of section 607(e) of such Act
4 is amended by striking “and” at the end of subpara-
5 graph (C), by striking the period at the end of sub-
6 paragraph (D) and inserting “, and”, and by adding
7 at the end thereof the following new subparagraph:

8 “(F) the taxable earnings (as defined in
9 subsection (n)) of the fund for any taxable year
10 beginning after the date of the enactment of the
11 Merchant Marine Investment Act of 1993.”

12 (5) Paragraph (3) of section 607(e) of such Act
13 is amended by adding at the end thereof the follow-
14 ing new sentence:

15 “Any amount included in the taxable earnings (as
16 defined in subsection (n)) of the fund for any tax-
17 able year beginning after the date of the enactment
18 of the Merchant Marine Investment Act of 1993
19 shall not be taken into account under this para-
20 graph.”

21 (6) Paragraph (4) of section 607(e) of such Act
22 is amended by adding at the end thereof the follow-
23 ing new sentence:

24 “In the case of taxable years beginning after the
25 date of the enactment of the Merchant Marine In-

1 vestment Act of 1993, any amount included in the
2 taxable earnings (as defined in subsection (n)) of the
3 fund shall not be taken into account under subpara-
4 graph (B), and subparagraphs (C) and (E) shall not
5 apply.”

6 (7) Paragraph (1) of section 607(f) of such Act
7 is amended by striking “or” at the end of subpara-
8 graph (B), by striking the period at the end of sub-
9 paragraph (C) and inserting “, or”, and by inserting
10 after subparagraph (C) the following new subpara-
11 graph:

12 “(D) the payment of the tax imposed by
13 subsection (n).”

14 (c) TREATMENT OF CERTAIN LEASE PAYMENTS.—

15 (1) Paragraph (1) of section 607(f) of such Act
16 is amended by striking “or” at the end of subpara-
17 graph (C), by striking the period at the end of sub-
18 paragraph (D) and inserting “, or”, and by inserting
19 after subparagraph (D) the following new subpara-
20 graph:

21 “(E) the payment of amounts which reduce
22 the principal amount (as determined under reg-
23 ulations) of a qualified lease of a qualified ves-
24 sel or of a barge or container which is part of
25 the complement of a qualified vessel.”

1 (2) Paragraph (4) of section 607(g) of such Act
2 is amended by inserting “(or to reduce the principal
3 amount of any qualified lease)” after “indebted-
4 ness”.

5 (3) Subsection (k) of section 607 of such Act
6 is amended by adding at the end thereof the follow-
7 ing new paragraph:

8 “(12) The term ‘qualified lease’ means any
9 lease with a term of at least 5 years.”

10 (d) AUTHORITY TO MAKE DEPOSITS FOR PRIOR
11 YEARS BASED ON AUDIT ADJUSTMENTS.—Subsection (b)
12 of section 607 of such Act is amended by adding at the
13 end thereof the following new paragraph:

14 “(4) To the extent permitted by joint regula-
15 tions, deposits may be made in excess of the limita-
16 tion described in paragraph (1) (and any limitation
17 specified in the agreement) for the taxable year if,
18 by reason of an audit adjustment to a prior taxable
19 year which became final during the taxable year, the
20 amount of the deposit could have been made for
21 such prior taxable year.”

22 (e) TREATMENT OF CAPITAL GAINS AND LOSSES.—

23 (1) Paragraph (3) of section 607(e) of such Act
24 is amended to read as follows:

25 “(3) The capital gain account shall consist of—

1 “(A) amounts representing long-term cap-
2 ital gains (as defined in section 1222 of such
3 Code) on assets referred to in subsection
4 (b)(1)(C), reduced by

5 “(B) amounts representing long-term cap-
6 ital losses (as defined in such section) on assets
7 held in the fund.”

8 (2) Subparagraph (B) of section 607(e)(4) of
9 such Act is amended to read as follows:

10 “(B)(i) amounts representing short-term
11 capital gains (as defined in section 1222 of
12 such Code) on assets referred to in subsection
13 (b)(1)(C), reduced by

14 “(ii) amounts representing short-term cap-
15 ital losses (as defined in such section) on assets
16 held in the fund, and”.

17 (3) Subparagraph (B) of section 607(h)(3) of
18 such Act is amended by striking “gain” and all that
19 follows and inserting “long-term capital gain (as de-
20 fined in section 1222 of such Code), and”.

21 (4) The last sentence of subparagraph (A) of
22 section 607(h)(6) of such Act is amended by striking
23 “28 percent (34 percent in the case of a corpora-
24 tion)” and inserting “the rate applicable to net cap-

1 ital gain under such section 1(h) or 1201(a), as the
2 case may be”.

3 (f) COMPUTATION OF INTEREST WITH RESPECT TO
4 NONQUALIFIED WITHDRAWALS.—

5 (1) Subparagraph (C) of section 607(h)(3) of
6 such Act is amended—

7 (A) by striking clause (i) and inserting the
8 following new clause:

9 “(i) no addition to the tax shall be
10 payable under section 6651 of such Code,
11 and”, and

12 (B) by striking “paid at the applicable rate
13 (as defined in paragraph (4))” in clause (ii) and
14 inserting “paid in accordance with section 6601
15 of such Code”.

16 (2) Subsection (h) of section 607 of such Act
17 is amended by striking paragraph (4) and by redesi-
18 gnating paragraphs (5) and (6) as paragraphs (4)
19 and (5), respectively.

20 (3) Subparagraph (A) of section 607(h)(5) of
21 such Act, as redesignated by paragraph (2), is
22 amended by striking “paragraph (5)” and inserting
23 “paragraph (4)”.

24 (g) OTHER CHANGES.—

1 (1) Section 607 of such Act is amended by
2 striking “the Internal Revenue Code of 1954” each
3 place it appears and inserting “the Internal Revenue
4 Code of 1986”.

5 (2) Subsection (c) of section 607 of such Act is
6 amended by striking “interest-bearing securities ap-
7 proved by the Secretary” and inserting “interest-
8 bearing securities and other income-producing assets
9 (including accounts receivable) approved by the Sec-
10 retary”.

11 **SEC. 3. AMENDMENTS OF INTERNAL REVENUE CODE OF**

12 **1986.**

13 (a) TREATMENT OF FUND EARNINGS.—

14 (1) Section 7518 of the Internal Revenue Code
15 of 1986 is amended by redesignating subsections (h)
16 and (i) as subsections (i) and (j), respectively, and
17 by inserting after subsection (g) the following new
18 subsection:

19 “(h) TAXATION OF EARNINGS ON INVESTMENTS.—

20 “(1) IN GENERAL.—The tax imposed by chap-
21 ter 1 shall be determined—

22 “(A) by excluding from gross income the
23 earnings from the investment and reinvestment
24 of amounts held in a capital construction fund,
25 and

1 “(B) by increasing the tax imposed by
2 such chapter by the product of the amount of
3 such earnings and the highest rate of tax speci-
4 fied in section 1 (section 11 in the case of a
5 corporation).

6 “(2) MAXIMUM RATE ON CAPITAL GAINS.—If
7 there is a net capital gain on amounts held in a cap-
8 ital construction fund, the rate of tax taken into ac-
9 count under paragraph (1)(B) with respect to such
10 gain shall not exceed the rate applicable to net cap-
11 ital gain under section 1(h) or 1201(a), as the case
12 may be.

13 “(3) COORDINATION WITH DEDUCTION FOR
14 NET OPERATING LOSSES.—Any earnings excluded
15 from gross income under paragraph (1) shall be ex-
16 cluded in determining taxable income under section
17 172(b)(2).

18 “(4) TAXABLE EARNINGS.—For purposes of
19 this section, the term ‘taxable earnings’ means net
20 earnings determined with the following modifica-
21 tions:

22 “(A) There shall be excluded interest in-
23 come exempt from taxation under section 203.

24 “(B) If the person maintaining the fund is
25 a corporation, there shall be excluded the per-

1 centage applicable under section 243(a)(1) of
2 any dividend received by the fund with respect
3 to which such person would (but for paragraph
4 (1)(A)) be allowed a deduction under section
5 243.

6 “(C) Losses from the sale or exchange of
7 capital assets shall be allowed only to the extent
8 of gains from such sales or exchanges.

9 “(D) There shall be excluded—

10 “(i) earnings on amounts deposited in
11 the fund which are attributable to vessels
12 documented under the laws of the United
13 States for operation in the fisheries of the
14 United States, and

15 “(ii) earnings on earnings described in
16 clause (i).”

17 (2) Subparagraph (D) of section 7518(a)(1) of
18 such Code is amended by inserting “reduced by the
19 tax imposed on such receipts under subsection (h)”
20 after “in such fund”.

21 (3) Subparagraph (C) of section 7518(c)(1) of
22 such Code is amended by striking “shall not be
23 taken into account” and inserting “shall be taken
24 into account as provided in subsection (h)”.

1 (4) Paragraph (2) of section 7518(d) of such
2 Code is amended by striking “and” at the end of
3 subparagraph (C), by striking the period at the end
4 of subparagraph (D) and inserting “, and”, and by
5 adding at the end thereof the following new subpara-
6 graph:

7 “(F) the taxable earnings (as defined in
8 subsection (h)) of the fund for any taxable year
9 beginning after the date of the enactment of the
10 Merchant Marine Investment Act of 1993.”

11 (5) Paragraph (3) of section 7518(d) of such
12 Code is amended by adding at the end thereof the
13 following new sentence: “Any amount included in
14 the taxable earnings (as defined in subsection (h)) of
15 the fund for any taxable year beginning after the
16 date of the enactment of the Merchant Marine In-
17 vestment Act of 1993 shall not be taken into ac-
18 count under this paragraph.”

19 (6) Paragraph (4) of section 7518(d) of such
20 Code is amended by adding at the end thereof the
21 following new sentence: “In the case of taxable years
22 beginning after the date of the enactment of the
23 Merchant Marine Investment Act of 1993, any
24 amount included in the taxable earnings (as defined
25 in subsection (h)) of the fund shall not be taken into

1 account under subparagraph (B), and subpara-
2 graphs (C) and (E) shall not apply.”

3 (7) Paragraph (1) of section 7518(g) of such
4 Code is amended by striking “subsection (h)” and
5 inserting “subsection (i)”.

6 (8) Paragraph (1) of section 7518(e) of such
7 Code is amended by striking “or” at the end of sub-
8 paragraph (B), by striking the period at the end of
9 subparagraph (C) and inserting “, or”, and by in-
10 sserting after subparagraph (C) the following new
11 subparagraph:

12 “(D) the tax imposed by subsection (h).”

13 (b) TREATMENT OF CERTAIN LEASE PAYMENTS.—

14 (1) Paragraph (1) of section 7518(e) of such
15 Code is amended by striking “or” at the end of sub-
16 paragraph (C), by striking the period at the end of
17 subparagraph (D) and inserting “, or”, and by in-
18 sserting after subparagraph (D) the following new
19 subparagraph:

20 “(E) the payment of amounts which reduce
21 the principal amount (as determined under reg-
22 ulations) of a qualified lease of a qualified ves-
23 sel or of a barge or container which is part of
24 the complement of a qualified vessel.

1 (2) Paragraph (4) of section 7518(f) of such
2 Code is amended by inserting “(or to reduce the
3 principal amount of any qualified lease)” after “in-
4 debtedness”.

5 (c) AUTHORITY TO MAKE DEPOSITS FOR PRIOR
6 YEARS BASED ON AUDIT ADJUSTMENTS.—Subsection (a)
7 of section 7518 of such Code is amended by adding at
8 the end thereof the following new paragraph:

9 “(4) To the extent permitted by joint regula-
10 tions, deposits may be made in excess of the limita-
11 tion described in paragraph (1) (and any limitation
12 specified in the agreement) for the taxable year if,
13 by reason of an audit adjustment to a prior taxable
14 year which became final during the taxable year, the
15 amount of the deposit could have been made for
16 such prior taxable year.”

17 (d) TREATMENT OF CAPITAL GAINS AND LOSSES.—

18 (1) Paragraph (3) of section 7518(d) of such
19 Code is amended to read as follows:

20 “(3) The capital gain account shall consist of—

21 “(A) amounts representing long-term cap-
22 ital gains (as defined in section 1222) on assets
23 referred to in subsection (b)(1)(C), reduced by

1 “(B) amounts representing long-term cap-
2 ital losses (as defined in such section) on assets
3 held in the fund.”

4 (2) Subparagraph (B) of section 7518(d)(4) of
5 such Code is amended to read as follows:

6 “(B)(i) amounts representing short-term
7 capital gains (as defined in section 1222) on as-
8 sets referred to in subsection (a)(1)(C), reduced
9 by

10 “(ii) amounts representing short-term cap-
11 ital losses (as defined in such section) on assets
12 held in the fund, and”.

13 (3) Subparagraph (B) of section 7518(g)(3) of
14 such Code is amended by striking “gain” and all
15 that follows and inserting “long-term capital gain
16 (as defined in section 1222), and”.

17 (4) The last sentence of subparagraph (A) of
18 section 7518(g)(6) of such Code is amended by
19 striking “28 percent (34 percent in the case of a
20 corporation)” and inserting “the rate applicable to
21 net capital gain under such section 1(h) or 1201(a),
22 as the case may be”.

23 (e) COMPUTATION OF INTEREST WITH RESPECT TO
24 NONQUALIFIED WITHDRAWALS.—

1 (1) Subparagraph (C) of section 7518(g)(3) of
2 such Code is amended—

3 (A) by striking clause (i) and inserting the
4 following new clause:

5 “(i) no addition to the tax shall be
6 payable under section 6651, and”, and

7 (B) by striking “paid at the applicable rate
8 (as defined in paragraph (4))” in clause (ii) and
9 inserting “paid in accordance with section
10 6601”.

11 (2) Subsection (g) of section 7518 of such Code
12 is amended by striking paragraph (4) and by redesi-
13 gnating paragraphs (5) and (6) as paragraphs (4)
14 and (5), respectively.

15 (3) Subparagraph (A) of section 7518(g)(5) of
16 such Code, as redesignated by paragraph (2), is
17 amended by striking “paragraph (5)” and inserting
18 “paragraph (4)”.

19 (f) OTHER CHANGES.—

20 (1) Paragraph (2) of section 7518(b) of such
21 Code is amended by striking “interest-bearing secu-
22 rities approved by the Secretary” and inserting “in-
23 terest-bearing securities and other income-producing
24 assets (including accounts receivable) approved by
25 the Secretary”.

1 (2) Subsection (j) of section 7518 of such Code
2 is amended by striking “this section.” and inserting
3 “the Omnibus Budget Reconciliation Act of 1993.”

4 (3) Section 137 of such Code is amended by
5 striking paragraph (4) and by redesignating para-
6 graphs (5) and (6) as paragraphs (4) and (5), re-
7 spectively.

8 (4) Subparagraph (B) of section 543(a)(1) of
9 such Code is amended to read as follows:

10 “(B) interest on amounts set aside in a capital
11 construction fund under section 607 of the Merchant
12 Marine Act, 1936 (46 App. U.S.C. 1177), or in a
13 construction reserve fund under section 511 of such
14 Act (46 App. U.S.C. 1161),”.

15 (5) Subsection (c) of section 56 is amended by
16 striking paragraph (2) and by redesignating para-
17 graph (3) as paragraph (2).

18 **SEC. 4. 3-YEAR RECOVERY PERIOD FOR UNITED STATES**

19 **FLAG VESSELS.**

20 (a) **IN GENERAL.**—Subparagraph (A) of section
21 168(e)(3) of the Internal Revenue Code of 1986 is amend-
22 ed by striking “and” at the end of clause (i), by striking
23 the period at the end of clause (ii) and inserting “, and”,
24 and by adding at the end thereof the following:

1 “(iii) any eligible vessel (as defined in
2 section 607(k)(1) of the Merchant Marine
3 Act, 1936, and its complement of contain-
4 ers, but only if the original use of such
5 vessel and containers commences with the
6 taxpayer.

7 Clause (iii) shall not apply to any vessel docu-
8 mented under the laws of the United States for
9 operation in the fisheries of the United States.”

10 (b) **MINIMUM TAX TREATMENT.**—

11 (1) Subparagraph (B) of section 56(a)(1) of
12 such Code is amended by inserting before the period
13 “or in paragraph (3)(A)(iii) of section 168(e)”.

14 (2) Clause (v) of section 56(g)(4)(A) of such
15 Code is amended by inserting “or in paragraph
16 (3)(A)(iii) of section 168(e)” after “section 168(f)”.

17 **SEC. 5. EFFECTIVE DATE.**

18 (a) **IN GENERAL.**—Except as otherwise provided in
19 this section, the amendments made by this Act shall apply
20 to taxable years beginning after the date of the enactment
21 of this Act.

22 (b) **DEFINITION OF QUALIFIED VESSEL.**—The
23 amendments made by paragraphs (2) and (3) of section
24 2(a) shall apply for purposes of determining whether any
25 withdrawal made after December 31, 1992, is a qualified

1 withdrawal (within the meaning of section 607(f) of the
2 Merchant Marine Act, 1936, as in effect after such
3 amendments).

4 (c) TAXATION OF EARNINGS.—The amendments
5 made by sections 2(b) and 3(a) shall apply to earnings
6 after December 31, 1992, in taxable years ending after
7 such date.

8 (d) CHANGES IN COMPUTATION OF INTEREST.—The
9 amendments made by sections 2(f) and 3(e) shall apply
10 to withdrawals made after December 31, 1992, including
11 for purposes of computing interest on such a withdrawal
12 for periods on or before such date.

13 (e) QUALIFIED LEASES.—The amendments made by
14 sections 2(c) and 3(b) shall apply to leases in effect on,
15 or entered into after, December 31, 1992.

16 (f) DEPRECIATION.—The amendments made by sec-
17 tion 4 shall apply to property placed in service after De-
18 cember 31, 1992, in taxable years ending after such date.

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