

106TH CONGRESS  
2D SESSION

# S. 2203

To amend title 26 of the Taxpayer Relief Act of 1986 to allow income averaging for fishermen without negative Alternative Minimum Tax treatment, for the creation of risk management accounts for fishermen and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 7, 2000

Mr. MURKOWSKI (for himself and Mr. STEVENS) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend title 26 of the Taxpayer Relief Act of 1986 to allow income averaging for fishermen without negative Alternative Minimum Tax treatment, for the creation of risk management accounts for fishermen 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 referred to as the “Fair Tax Treat-  
5 ment for Fishermen Act of 2000”.

1 **SEC. 2. INCOME AVERAGING FOR FISHERMEN WITHOUT IN-**  
 2 **CREASING ALTERNATIVE MINIMUM LIABIL-**  
 3 **ITY.**

4 (a) IN GENERAL.—Section 55(c) (defining regular  
 5 tax) is amended by redesignating paragraph (2) as para-  
 6 graph (3) and by inserting after paragraph (1) the fol-  
 7 lowing:

8 “(2) COORDINATION WITH INCOME AVERAGING  
 9 FOR FISHERMEN.—Solely for purposes of this sec-  
 10 tion, section 1301 (relating to averaging of fishing  
 11 income) shall not apply in computing the regular  
 12 tax.”.

13 (b) ALLOWING INCOME AVERAGING FOR FISHER-  
 14 MEN.—

15 (1) IN GENERAL.—Section 1301(a) is amended  
 16 by striking “farming business” and inserting “farm-  
 17 ing business or fishing business,”.

18 (2) DEFINITION OF ELECTED FARM INCOME.—

19 (A) IN GENERAL.—Clause (i) of section  
 20 1301(b)(1)(A) is amended by inserting “or fish-  
 21 ing business” before the semicolon.

22 (B) CONFORMING AMENDMENT.—Subpara-  
 23 graph (B) of section 1301(b)(1) is amended by  
 24 inserting “or fishing business” after “farming  
 25 business” both places it occurs.

1           (3) DEFINITION OF FISHING BUSINESS.—Sec-  
2           tion 1301(b) is amended by adding at the end the  
3           following new paragraph:

4           “(4) FISHING BUSINESS.—The term ‘fishing  
5           business’ means the conduct of commercial fishing  
6           (as defined in section 3 of the Magnuson-Stevens  
7           Fishery Conservation and Management Act (16  
8           U.S.C. 1802, Public Law 94–265 as amended).)”.

9   **SEC. 3. FISHING RISK MANAGEMENT ACCOUNTS.**

10          (a) IN GENERAL.—Subpart C of part II of sub-  
11          chapter E of chapter 1 (relating to taxable year for which  
12          deductions taken) is amended by inserting after section  
13          468B the following:

14   **“SEC. 468C. FISHING RISK MANAGEMENT ACCOUNTS.**

15          “(a) DEDUCTION ALLOWED.—In the case of an indi-  
16          vidual engaged in an eligible commercial fishing activity,  
17          there shall be allowed as a deduction for any taxable year  
18          the amount paid in cash by the taxpayer during the tax-  
19          able year Fishing Risk Management Account (hereinafter  
20          referred to as the ‘FisheRMen Account’).

21          “(b) LIMITATION.—

22                  “(1) CONTRIBUTIONS.—The amount which a  
23          taxpayer may pay into the FisheRMen Account for  
24          any taxable year shall not exceed 20 percent of so  
25          much of the taxable income of the taxpayer (deter-

1 mined without regard to this section) which is at-  
2 tributable (determined in the manner applicable  
3 under section 1301) to any eligible commercial fish-  
4 ing activity.

5 “(2) DISTRIBUTIONS.—Distributions from a  
6 FISHERMEN Account may not be used to purchase,  
7 lease, or finance any new fishing vessel, add capacity  
8 to any fishery, or otherwise contribute to the over-  
9 capitalization of any fishery. The Secretary of Com-  
10 merce shall implement regulations to enforce this  
11 paragraph.

12 “(c) ELIGIBLE BUSINESSES.—For purposes of this  
13 section—

14 “(1) COMMERCIAL FISHING ACTIVITY.—The  
15 term ‘commercial fishing activity’ has the meaning  
16 given the term ‘commercial fishing’ by section (3) of  
17 the Magnuson-Stevens Fishery Conservation and  
18 Management Act (16 U.S.C. 1802, Public Law 94–  
19 265 as amended) but only if such fishing is not a  
20 passive activity (within the meaning of section  
21 469(c)) of the taxpayer.

22 “(d) FISHERMEN ACCOUNT.—For purposes of this  
23 section—

24 “(1) IN GENERAL.—The term ‘FISHERMEN Ac-  
25 count’ means a trust created or organized in the

1 United States for the exclusive benefit of the tax-  
2 payer, but only if the written governing instrument  
3 creating the trust meets the following requirements:

4 “(A) No contribution will be accepted for  
5 any taxable year in excess of the amount al-  
6 lowed as a deduction under subsection (a) for  
7 such year.

8 “(B) The trustee is a bank (as defined in  
9 section 408(n)) or another person who dem-  
10 onstrates to the satisfaction of the Secretary  
11 that the manner in which such person will ad-  
12 minister the trust will be consistent with the re-  
13 quirements of this section.

14 “(C) The assets of the trust consist en-  
15 tirely of cash or of obligations which have ade-  
16 quate stated interest (as defined in section  
17 1274(c)(2)) and which pay such interest not  
18 less often than annually.

19 “(D) All income of the trust is distributed  
20 currently to the grantor.

21 “(E) The assets of the trust will not be  
22 commingled with other property except in a  
23 common trust fund or common investment  
24 fund.

1           “(2) ACCOUNT TAXED AS GRANTOR TRUST.—

2           The grantor of a FisheRMen Account shall be treat-  
3           ed for purposes of this title as the owner of such Ac-  
4           count and shall be subject to tax thereon in accord-  
5           ance with subpart E of part I of subchapter J of  
6           this chapter (relating to grantors and others treated  
7           as substantial owners).

8           “(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

9           “(1) IN GENERAL.—Except as provided in para-  
10          graph (2), there shall be includible in the gross in-  
11          come of the taxpayer for any taxable year—

12                   “(A) any amount distributed from a Fish-  
13                   eRMen Account of the taxpayer during such  
14                   taxable year, and

15                   “(B) any deemed distribution under—

16                           “(i) subsection (f)(1) (relating to de-  
17                           posits not distributed within 5 years),

18                           “(ii) subsection (f)(2) (relating to ces-  
19                           sation in eligible commercial fishing activi-  
20                           ties), and

21                           “(iii) subparagraph (A) or (B) of sub-  
22                           section (f)(3) (relating to prohibited trans-  
23                           actions and pledging account as security).

24           “(2) EXCEPTIONS.—Paragraph (1)(A) shall not  
25          apply to—

1           “(A) any distribution to the extent attrib-  
2           utable to income of the Account, and

3           “(B) the distribution of any contribution  
4           paid during a taxable year to a FisheRMen Ac-  
5           count to the extent that such contribution ex-  
6           ceeds the limitation applicable under subsection  
7           (b) if requirements similar to the requirements  
8           of section 408(d)(4) are met.

9           For purposes of subparagraph (A), distributions  
10          shall be treated as first attributable to income and  
11          then to other amounts.

12          “(f) SPECIAL RULES.—

13                 “(1) TAX ON DEPOSITS IN ACCOUNT WHICH  
14                 ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

15                 “(A) IN GENERAL.—If, at the close of any  
16                 taxable year, there is a nonqualified balance in  
17                 any FisheRMen Account—

18                         “(i) there shall be deemed distributed  
19                         from such Account during such taxable  
20                         year an amount equal to such balance, and

21                         “(ii) the taxpayer’s tax imposed by  
22                         this chapter for such taxable year shall be  
23                         increased by 10 percent of such deemed  
24                         distribution.

1           The preceding sentence shall not apply if an  
2           amount equal to such nonqualified balance is  
3           distributed from such Account to the taxpayer  
4           before the due date (including extensions) for  
5           filing the return of tax imposed by this chapter  
6           for such year (or, if earlier, the date the tax-  
7           payer files such return for such year).

8           “(B) NONQUALIFIED BALANCE.—For pur-  
9           poses of subparagraph (A), the term ‘non-  
10          qualified balance’ means any balance in the Ac-  
11          count on the last day of the taxable year which  
12          is attributable to amounts deposited in such Ac-  
13          count before the 4th preceding taxable year.

14          “(C) ORDERING RULE.—For purposes of  
15          this paragraph, distributions from a FischeRMen  
16          Account (other than distributions of current in-  
17          come) shall be treated as made from deposits in  
18          the order in which such deposits were made, be-  
19          ginning with the earliest deposits.

20          “(2) CESSATION IN ELIGIBLE BUSINESS.—At  
21          the close of the first disqualification period after a  
22          period for which the taxpayer was engaged in an eli-  
23          gible commercial fishing activity, there shall be  
24          deemed distributed from the FischeRMen Account of  
25          the taxpayer an amount equal to the balance in such

1 Account (if any) at the close of such disqualification  
2 period. For purposes of the preceding sentence, the  
3 term ‘disqualification period’ means any period of 2  
4 consecutive taxable years for which the taxpayer is  
5 not engaged in an eligible commercial fishing activ-  
6 ity.

7 “(3) CERTAIN RULES TO APPLY.—Rules similar  
8 to the following rules shall apply for purposes of this  
9 section:

10 “(A) Section 220(f)(8) (relating to treat-  
11 ment on death).

12 “(B) Section 408(e)(2) (relating to loss of  
13 exemption of account where individual engages  
14 in prohibited transaction).

15 “(C) Section 408(e)(4) (relating to effect  
16 of pledging account as security).

17 “(D) Section 408(g) (relating to commu-  
18 nity property laws).

19 “(E) Section 408(h) (relating to custodian  
20 accounts).

21 “(4) TIME WHEN PAYMENTS DEEMED MADE.—  
22 For purposes of this section, a taxpayer shall be  
23 deemed to have made a payment to a FisheRMen  
24 Account on the last day of a taxable year if such  
25 payment is made on account of such taxable year

1 and is made on or before the due date (without re-  
2 gard to extensions) for filing the return of tax for  
3 such taxable year.

4 “(5) INDIVIDUAL.—For purposes of this sec-  
5 tion, the term ‘individual’ shall not include an estate  
6 or trust.

7 “(6) DEDUCTION NOT ALLOWED FOR SELF-EM-  
8 PLOYMENT TAX.—The deduction allowable by reason  
9 of subsection (a) shall not be taken into account in  
10 determining an individual’s net earnings from self-  
11 employment (within the meaning of section 1402(a))  
12 for purposes of chapter 2.

13 “(g) REPORTS.—The trustee of a FisheRMen Ac-  
14 count shall make such reports regarding such Account to  
15 the Secretary and to the person for whose benefit the Ac-  
16 count is maintained with respect to contributions, dis-  
17 tributions, and such other matters as the Secretary may  
18 require under regulations. The reports required by this  
19 subsection shall be filed at such time and in such manner  
20 and furnished to such persons at such time and in such  
21 manner as may be required by such regulations.”.

22 (b) TAX ON EXCESS CONTRIBUTIONS.—

23 (1) Subsection (a) of section 4973 (relating to  
24 tax on excess contributions to certain tax-favored ac-  
25 counts and annuities) is amended by striking “or”

1 at the end of paragraph (3), by redesignating para-  
2 graph (4) as paragraph (5), and by inserting after  
3 paragraph (3) the following:

4 “(4) a FisheRMen Account (within the meaning  
5 of section 468C(d)), or”.

6 (2) Section 4973 is amended by adding at the  
7 end the following:

8 “(g) EXCESS CONTRIBUTIONS TO FISHERMEN AC-  
9 COUNTS.—For purposes of this section, in the case of a  
10 FisheRMen Account (within the meaning of section  
11 468C(d)), the term ‘excess contributions’ means the  
12 amount by which the amount contributed for the taxable  
13 year to the Account exceeds the amount which may be con-  
14 tributed to the Account under section 468C(b) for such  
15 taxable year. For purposes of this subsection, any con-  
16 tribution which is distributed out of the FisheRMen Ac-  
17 count in a distribution to which section 468C(e)(2)(B) ap-  
18 plies shall be treated as an amount not contributed.”.

19 (3) The section heading for section 4973 is  
20 amended to read as follows:

1 **“SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN AC-**  
2 **COUNTS, ANNUITIES, ETC.”.**

3 (4) The table of sections for chapter 43 is  
4 amended by striking the item relating to section  
5 4973 and inserting the following:

“Sec. 4973 Excess contributions to certain accounts, annuities, etc.”.

6 **(c) TAX ON PROHIBITED TRANSACTIONS.—**

7 (1) Subsection (c) of section 4975 (relating to  
8 tax on prohibited transactions) is amended by add-  
9 ing at the end the following:

10 “(6) SPECIAL RULE FOR FISHERMEN AC-  
11 COUNTS.—A person for whose benefit a FisheRMen  
12 Account (within the meaning of section 468C(d)) is  
13 established shall be exempt from the tax imposed by  
14 this section with respect to any transaction con-  
15 cerning such account (which would otherwise be tax-  
16 able under this section) if, with respect to such  
17 transaction, the account ceases to be a FisheRMen  
18 Account by reason of the application of section  
19 468C(f)(3)(A) to such account.”.

20 (2) Paragraph (1) of section 4975(e) is amend-  
21 ed by redesignating subparagraphs (E) and (F) as  
22 subparagraphs (F) and (G), respectively, and by in-  
23 serting after subparagraph (D) the following:

1                   “(E) a FisherMen Account described in  
2                   section 468C(d),”.

3           (d) FAILURE TO PROVIDE REPORTS ON FISHERMEN  
4 ACCOUNTS.—Paragraph (2) of section 6693(a) (relating  
5 to failure to provide reports on certain tax-favored ac-  
6 counts or annuities) is amended by redesignating subpara-  
7 graphs (C) and (D) as subparagraphs (D) and (E), re-  
8 spectively, and by inserting after subparagraph (B) the  
9 following:

10                   “(C) section 468C(g) (relating to Fisher-  
11                   Men Accounts),”.

12           (e) CLERICAL AMENDMENT.—The table of sections  
13 for subpart C of part II of subchapter E of chapter 1 is  
14 amended by inserting after the item relating to section  
15 468B the following:

“Sec. 468C. Fishing Risk Management Accounts.”.

16 **SECTION 4. EFFECTIVE DATE.**

17           The changes made by this Act shall apply to taxable  
18 years beginning after December 31, 2000.

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