

113TH CONGRESS
1ST SESSION

S. 551

To provide an election to terminate certain capital construction funds without penalties.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2013

Mr. WYDEN (for himself, Ms. MURKOWSKI, Mr. BEGICH, Ms. CANTWELL, Mrs. MURRAY, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide an election to terminate certain capital construction funds without penalties.

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 “Capital Construction
5 Fund Penalty Relief Act”.

6 **SEC. 2. ELECTION TO TERMINATE CERTAIN CAPITAL CON-**
7 **STRUCTION FUNDS.**

8 (a) AMENDMENTS TO CHAPTER 535 OF TITLE 46,
9 UNITED STATES CODE.—

1 (1) IN GENERAL.—Chapter 535 of title 46,
2 United States Code, is amended by adding at the
3 end the following new section:

4 **“§ 53518. Election to terminate**

5 “(a) IN GENERAL.—

6 “(1) ELECTION.—Any person who has entered
7 into an agreement under this chapter with respect to
8 a vessel operated in the fisheries of the United
9 States may make an election under this paragraph
10 to terminate the capital construction fund estab-
11 lished under such agreement.

12 “(2) EFFECT OF ELECTION ON INDIVIDUALS.—
13 In the case of an individual who makes an election
14 under paragraph (1) with respect to a capital con-
15 struction fund—

16 “(A) any amount remaining in such capital
17 construction fund on the date of such election
18 shall be distributed to such individual as a non-
19 qualified withdrawal, except that—

20 “(i) in computing the tax on such
21 withdrawal, except as provided in para-
22 graph (4), subsections (c)(3)(B) and (f) of
23 section 53511 shall not apply; and

1 “(ii) the taxpayer may elect to aver-
2 age the income from such withdrawal as
3 provided in subsection (b); and

4 “(B) such individual shall not be eligible to
5 enter into, directly or indirectly, any future
6 agreement to establish a capital construction
7 fund under this chapter with respect to a vessel
8 operated in the fisheries of the United States.

9 “(3) EFFECT OF ELECTION FOR ENTITIES.—

10 “(A) IN GENERAL.—In the case of a per-
11 son (other than an individual) who makes an
12 election under paragraph (1)—

13 “(i) the total amount in the capital
14 construction fund on the date of such elec-
15 tion shall be distributed to the share-
16 holders, partners, or members of such per-
17 son in accordance with the terms of the in-
18 struments setting forth the ownership in-
19 terests of such shareholders, partners, or
20 members;

21 “(ii) each shareholder, partner, or
22 member shall be treated as having estab-
23 lished a special temporary capital construc-
24 tion fund and having deposited amounts

1 received in the distribution into such spe-
2 cial temporary capital construction fund;

3 “(iii) no gain or loss shall be recog-
4 nized with respect to such distribution;

5 “(iv) the basis of any shareholder,
6 partner, or member in the person shall not
7 be reduced as a result of such distribution;

8 “(v) any amounts not distributed pur-
9 suant to clause (i) shall be distributed in
10 a nonqualified withdrawal; and

11 “(vi) such person shall not be eligible
12 to enter into, directly or indirectly, any fu-
13 ture agreement to establish a capital con-
14 struction fund under this chapter with re-
15 spect to a vessel operated in the fisheries
16 of the United States.

17 “(B) SPECIAL TEMPORARY CAPITAL CON-
18 STRUCTION FUNDS.—For purposes of this chap-
19 ter, a special temporary capital construction
20 fund shall be treated in the same manner as a
21 capital construction fund established under sec-
22 tion 53503, except that the following rules shall
23 apply:

24 “(i) A special temporary capital con-
25 struction fund shall be established without

1 regard to any agreement under section
2 53503 and without regard to any eligible
3 or qualified vessel.

4 “(ii) Section 53505 shall not apply
5 and no amounts may be deposited into a
6 special temporary capital construction fund
7 other than amounts received pursuant to a
8 distribution described in subparagraph
9 (A)(i).

10 “(iii) In the case of any amounts dis-
11 tributed from a special temporary capital
12 construction fund directly to a capital con-
13 struction fund of the taxpayer established
14 under section 53505—

15 “(I) no gain or loss shall be rec-
16 ognized;

17 “(II) the limitation under section
18 53505 shall not apply with respect to
19 any amount so transferred;

20 “(III) such amounts shall not re-
21 duce taxable income under section
22 53507(a)(1); and

23 “(IV) for purposes of section
24 53511(e), such amounts shall be
25 treated as deposited in the capital

1 construction fund on the date that
2 such funds were deposited in the cap-
3 ital construction fund with respect to
4 which the election under paragraph
5 (1) was made.

6 “(iv) In the case of any amounts dis-
7 tributed from a special temporary capital
8 construction fund pursuant to an election
9 under paragraph (1), clauses (i) and (ii) of
10 paragraph (2)(A) shall not apply to so
11 much of such amounts as are attributable
12 to earnings accrued after the date of the
13 establishment of such special temporary
14 capital construction fund.

15 “(v) Any amount not distributed from
16 a special temporary capital construction
17 fund before the due date of the tax return
18 (including extension) for the last taxable
19 year of the individual ending before Janu-
20 ary 1, 2019, shall be treated as distributed
21 to the taxpayer on the day before such due
22 date as if an election under paragraph (1)
23 were made by the taxpayer on such day.

24 “(C) REGULATIONS.—The joint regula-
25 tions shall provide rules for—

1 “(i) assigning the amounts received by
2 the shareholders, partners, or members in
3 a distribution described in subparagraph
4 (A)(i) to the accounts described in section
5 53508(a) in special temporary capital con-
6 struction funds; and

7 “(ii) preventing the abuse of the pur-
8 poses of this section.

9 “(4) TAX BENEFIT RULE.—Rules similar to the
10 rules under section 53511(f)(3) shall apply for pur-
11 poses of determining tax liability on any nonqualified
12 withdrawal under paragraph (2)(A), (3)(A)(v), or
13 (3)(B)(v).

14 “(5) ELECTION.—Any election under paragraph
15 (1)—

16 “(A) may only be made—

17 “(i) by a person who maintains a cap-
18 ital construction fund with respect to a
19 vessel operated in the fisheries of the
20 United States on the date of the enactment
21 of this section; or

22 “(ii) by a person who maintains a
23 capital construction fund which was estab-
24 lished pursuant to paragraph (3)(A)(ii) as
25 a result of an election made by an entity

1 in which such person was a shareholder,
2 partner, or member;

3 “(B) shall be made not later than the due
4 date of the tax return (including extensions) for
5 the person’s last taxable year ending on or be-
6 fore December 31, 2018; and

7 “(C) shall apply to all amounts in the cap-
8 ital construction fund with respect to which the
9 election is made.

10 “(b) ELECTION TO AVERAGE INCOME.—At the elec-
11 tion of an individual who has received a distribution de-
12 scribed in subsection (a), for purposes of section 1301 of
13 the Internal Revenue Code of 1986—

14 “(1) such individual shall be treated as engaged
15 in a fishing business, and

16 “(2) such distribution shall be treated as in-
17 come attributable to a fishing business for such tax-
18 able year.”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 53511 of title 46, United
21 States Code, is amended by striking “section
22 53513” and inserting “sections 53513 and
23 53518”.

24 (B) The table of sections for chapter 535
25 of title 46, United States Code, is amended by

1 inserting after the item relating to section
2 53517 the following new item:

“53518. Election to terminate.”.

3 (b) AMENDMENTS TO THE INTERNAL REVENUE
4 CODE OF 1986.—

5 (1) IN GENERAL.—Section 7518 of the Internal
6 Revenue Code of 1986 is amended by adding at the
7 end the following new subsection:

8 “(j) ELECTION TO TERMINATE CAPITAL CONSTRUC-
9 TION FUNDS.—

10 “(1) IN GENERAL.—Any person who has en-
11 tered into an agreement under chapter 535 of title
12 46 of the United States Code, with respect to a ves-
13 sel operated in the fisheries of the United States
14 may make an election under this paragraph to ter-
15 minate the capital construction fund established
16 under such agreement.

17 “(2) EFFECT OF ELECTION ON INDIVIDUALS.—
18 In the case of an individual who makes an election
19 under paragraph (1) with respect to a capital con-
20 struction fund, any amount remaining in such cap-
21 ital construction fund on the date of such election
22 shall be distributed to such individual as a non-
23 qualified withdrawal, except that—

24 “(A) in computing the tax on such with-
25 drawal, except as provided in paragraph (4),

1 paragraphs (3)(C)(ii) and (6) of subsection (g)
2 shall not apply, and

3 “(B) the taxpayer may elect to average the
4 income from such withdrawal as provided in
5 paragraph (6).

6 “(3) EFFECT OF ELECTION FOR ENTITIES.—

7 “(A) IN GENERAL.—In the case of a per-
8 son (other than an individual) who makes an
9 election under paragraph (1)—

10 “(i) the total amount in the capital
11 construction fund on the date of such elec-
12 tion shall be distributed to the share-
13 holders, partners, or members of such per-
14 son in accordance with the terms of the in-
15 struments setting forth the ownership in-
16 terests of such shareholders, partners, or
17 members,

18 “(ii) each shareholder, partner, or
19 member shall be treated as having estab-
20 lished a special temporary capital construc-
21 tion fund and having deposited amounts
22 received in the distribution into such spe-
23 cial temporary capital construction fund,

24 “(iii) no gain or loss shall be recog-
25 nized with respect to such distribution,

1 “(iv) the basis of any shareholder,
2 partner, or member in the person shall not
3 be reduced as a result of such distribution,
4 and

5 “(v) any amounts not distributed pur-
6 suant to clause (i) shall be distributed as
7 a nonqualified withdrawal.

8 “(B) SPECIAL TEMPORARY CAPITAL CON-
9 STRUCTION FUNDS.—For purposes of this sec-
10 tion, a special temporary capital construction
11 fund shall be treated in the same manner as a
12 capital construction fund established under sec-
13 tion 53503 of title 46, United States Code, ex-
14 cept that the following rules shall apply:

15 “(i) Subsection (a) shall not apply
16 and no amounts may be deposited into a
17 special temporary capital construction fund
18 other than amounts received pursuant to a
19 distribution described in subparagraph
20 (A)(i).

21 “(ii) In the case of any amounts dis-
22 tributed from a special temporary capital
23 construction fund directly to a capital con-
24 struction fund of the taxpayer established

1 under section 53505 of title 46, United
2 States Code—

3 “(I) no gain or loss shall be rec-
4 ognized;

5 “(II) the limitation under sub-
6 section (a) shall not apply with re-
7 spect to any amount so transferred;

8 “(III) such amounts shall not re-
9 duce taxable income under subsection
10 (c)(1)(A); and

11 “(IV) for purposes of subsection
12 (g)(5), such amounts shall be treated
13 as deposited in the capital construc-
14 tion fund on the date that such funds
15 were deposited in the capital construc-
16 tion fund with respect to which the
17 election under paragraph (1) was
18 made.

19 “(iii) In the case of any amounts dis-
20 tributed from a special temporary capital
21 construction fund pursuant to an election
22 under paragraph (1), subparagraphs (A)
23 and (B) of paragraph (2) shall not apply
24 to so much of such amounts as are attrib-
25 utable to earnings accrued after the date

1 of the establishment of such special tem-
2 porary capital construction fund.

3 “(iv) Any amount not distributed
4 from a special temporary capital construc-
5 tion fund before the due date of the tax re-
6 turn (including extension) for the last tax-
7 able year of the individual ending before
8 January 1, 2019, shall be treated as dis-
9 tributed to the taxpayer on the day before
10 such due date as if an election under para-
11 graph (1) were made by the taxpayer on
12 such day.

13 “(C) REGULATIONS.—The joint regula-
14 tions shall provide rules for—

15 “(i) assigning the amounts received by
16 the shareholders, partners, or members in
17 a distribution described in subparagraph
18 (A)(i) to the accounts described in sub-
19 section (d)(1) in special temporary capital
20 construction funds; and

21 “(ii) preventing the abuse of the pur-
22 poses of this section.

23 “(4) TAX BENEFIT RULE.—Rules similar to the
24 rules under subsection (g)(6)(B) shall apply for pur-
25 poses of determining tax liability on any nonqualified

1 withdrawal under paragraph (2), (3)(A)(v), or
2 (3)(B)(iv).

3 “(5) ELECTION.—Any election under paragraph
4 (1)—

5 “(A) may only be made—

6 “(i) by a person who maintains a cap-
7 ital construction fund with respect to a
8 vessel operated in the fisheries of the
9 United States on the date of the enactment
10 of this subsection, or

11 “(ii) by a person who maintains a
12 capital construction fund which was estab-
13 lished pursuant to subparagraph (3)(A)(ii)
14 as a result of an election made by an enti-
15 ty in which such person was a shareholder,
16 partner, or member,

17 “(B) shall be made not later than the due
18 date of the tax return (including extensions) for
19 the person’s last taxable year ending on or be-
20 fore December 31, 2018, and

21 “(C) shall apply to all amounts in the cap-
22 ital construction fund with respect to which the
23 election is made.

24 “(6) ELECTION TO AVERAGE INCOME.—At the
25 election of an individual who has received a distribu-

1 tion described in paragraph (2), for purposes of sec-
2 tion 1301—

3 “(A) such individual shall be treated as en-
4 gaged in a fishing business, and

5 “(B) such distribution shall be treated as
6 income attributable to a fishing business for
7 such taxable year.”.

8 (2) CONFORMING AMENDMENT.—Section
9 7518(g)(1) of such Code is amended by striking
10 “subsection (h)” and inserting “subsections (h) and
11 (j)”.

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