

111TH CONGRESS
2D SESSION

S. 3276

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

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2010

Mr. WYDEN (for himself and Ms. MURKOWSKI) 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. ELECTION TO TERMINATE CERTAIN CAPITAL**

4 **CONSTRUCTION FUNDS.**

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

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

1 **“§ 53518. Election to terminate**

2 “(a) IN GENERAL.—

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

9 “(2) EFFECT OF ELECTION ON INDIVIDUALS.—

10 In the case of an individual who makes an election
11 under paragraph (1) with respect to a capital con-
12 struction fund—

13 “(A) any amount remaining in such capital
14 construction fund on the applicable date shall
15 be distributed to such individual as a non-
16 qualified withdrawal, except that—

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

21 “(ii) the taxpayer may elect to aver-
22 age the income from such withdrawal as
23 provided in subsection (b); and

24 “(B) such individual shall not be eligible to
25 enter into, directly or indirectly, any future
26 agreement to establish a capital construction

1 fund under this chapter with respect to a vessel
2 operated in the fisheries of the United States.

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

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

7 “(i) the total amount in the capital
8 construction fund on the applicable date
9 shall be distributed to the shareholders,
10 partners, or members of such person in ac-
11 cordance with the terms of the instruments
12 setting forth the ownership interests of
13 such shareholders, partners, or members;

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

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

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

1 “(v) any amounts not distributed pur-
2 suant to clause (i) shall be distributed in
3 a nonqualified withdrawal; and

4 “(vi) such person shall not be eligible
5 to enter into, directly or indirectly, any fu-
6 ture agreement to establish a capital con-
7 struction fund under this chapter with re-
8 spect to a vessel operated in the fisheries
9 of the United States.

10 “(B) SPECIAL TEMPORARY CAPITAL CON-
11 STRUCTION FUNDS.—For purposes of this chap-
12 ter, a special temporary capital construction
13 fund shall be treated in the same manner as a
14 capital construction fund established under sec-
15 tion 53503, except that the following rules shall
16 apply:

17 “(i) A special temporary capital con-
18 struction fund shall be established without
19 regard to any agreement under section
20 53503 and without regard to any eligible
21 or qualified vessel.

22 “(ii) Section 53505 shall not apply
23 and no amounts may be deposited into a
24 special temporary capital construction fund
25 other than amounts received pursuant to a

1 distribution described in subparagraph
2 (A)(i).

3 “(iii) In the case of any amounts dis-
4 tributed from a special temporary capital
5 construction fund directly to a capital con-
6 struction fund of the taxpayer established
7 under section 53505—

8 “(I) no gain or loss shall be rec-
9 ognized;

10 “(II) the limitation under section
11 53505 shall not apply with respect to
12 any amount so transferred;

13 “(III) such amounts shall not re-
14 duce taxable income under section
15 53507(a)(1); and

16 “(IV) for purposes of section
17 53511(e), such amounts shall be
18 treated as deposited in the capital
19 construction fund on the date that
20 such funds were deposited in the cap-
21 ital construction fund with respect to
22 which the election under paragraph
23 (1) was made.

24 “(iv) In the case of any amounts dis-
25 tributed from a special temporary capital

1 construction fund pursuant to an election
2 under paragraph (1), clauses (i) and (ii) of
3 paragraph (2)(A) shall not apply to so
4 much of such amounts as are attributable
5 to earnings accrued after the date of the
6 establishment of such special temporary
7 capital construction fund.

8 “(v) Any amount not distributed from
9 a special temporary capital construction
10 fund before the due date of the tax return
11 (including extension) for the last taxable
12 year of the individual ending before Janu-
13 ary 1, 2012, shall be treated as distributed
14 to the taxpayer on the day before such due
15 date as if an election under paragraph (1)
16 were made by the taxpayer on such day.

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

19 “(i) assigning the amounts received by
20 the shareholders, partners, or members in
21 a distribution described in subparagraph
22 (A)(i) to the accounts described in section
23 53508(a) in special temporary capital con-
24 struction funds; and

1 “(ii) preventing the abuse of the pur-
2 poses of this section.

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

8 “(5) APPLICABLE DATE.—For purposes of this
9 subsection, the term ‘applicable date’ means—

10 “(A) with respect to any capital construc-
11 tion fund which has a balance of less than
12 \$1,000,000 on the date that an election under
13 paragraph (1) was made, the date of such elec-
14 tion; and

15 “(B) with respect to any other capital con-
16 struction fund, the last day of the taxable year
17 which includes the date of the enactment of this
18 section.

19 “(6) ELECTION.—Any election under paragraph
20 (1)—

21 “(A) may only be made—

22 “(i) by a person who maintains a cap-
23 ital construction fund with respect to a
24 vessel operated in the fisheries of the

1 United States on the date of the enactment
2 of this section; or

3 “(ii) by a person who maintains a
4 capital construction fund which was estab-
5 lished pursuant to paragraph (3)(A)(ii) as
6 a result of an election made by an entity
7 in which such person was a shareholder,
8 partner, or member;

9 “(B) shall be made not later than the due
10 date of the tax return (including extensions) for
11 the person’s last taxable year ending on or be-
12 fore December 31, 2012; and

13 “(C) shall apply to all amounts in the cap-
14 ital construction fund with respect to which the
15 election is made.

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

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

22 “(A) such distribution shall be treated as
23 income attributable to a fishing business for
24 such taxable year.”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 53511 of title 46, United
 2 States Code, is amended by striking “section
 3 53513” and inserting “sections 53513 and
 4 53518”.

5 (B) The table of sections for chapter 535
 6 of title 46, United States Code, is amended by
 7 inserting after the item relating to section
 8 53517 the following new item:

“53518. Election to terminate.”.

9 (b) AMENDMENTS TO THE INTERNAL REVENUE
 10 CODE OF 1986.—

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

14 “(j) ELECTION TO TERMINATE CAPITAL CONSTRUC-
 15 TION FUNDS.—

16 “(1) IN GENERAL.—Any person who has en-
 17 tered into an agreement under chapter 535 of title
 18 46 of the United States Code, with respect to a ves-
 19 sel operated in the fisheries of the United States
 20 may make an election under this paragraph to ter-
 21minate the capital construction fund established
 22 under such agreement.

23 “(2) EFFECT OF ELECTION ON INDIVIDUALS.—
 24 In the case of an individual who makes an election
 25 under paragraph (1) with respect to a capital con-

1 construction fund, any amount remaining in such cap-
2 ital construction fund on the applicable date shall be
3 distributed to such individual as a nonqualified with-
4 drawal, except that—

5 “(A) in computing the tax on such with-
6 drawal, except as provided in paragraph (4),
7 paragraphs (3)(C)(ii) and (6) of subsection (g)
8 shall not apply, and

9 “(B) the taxpayer may elect to average the
10 income from such withdrawal as provided in
11 paragraph (7).

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

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

16 “(i) the total amount in the capital
17 construction fund on the applicable date
18 shall be distributed to the shareholders,
19 partners, or members of such person in ac-
20 cordance with the terms of the instruments
21 setting forth the ownership interests of
22 such shareholders, partners, or members,

23 “(ii) each shareholder, partner, or
24 member shall be treated as having estab-
25 lished a special temporary capital construc-

1 tion fund and having deposited amounts
2 received in the distribution into such spe-
3 cial temporary capital construction fund,

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

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

10 “(v) any amounts not distributed pur-
11 suant to clause (i) shall be distributed as
12 a nonqualified withdrawal.

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

20 “(i) Subsection (a) shall not apply
21 and no amounts may be deposited into a
22 special temporary capital construction fund
23 other than amounts received pursuant to a
24 distribution described in subparagraph
25 (A)(i).

1 “(ii) In the case of any amounts dis-
2 tributed from a special temporary capital
3 construction fund directly to a capital con-
4 struction fund of the taxpayer established
5 under section 53505 of title 46, United
6 States Code—

7 “(I) no gain or loss shall be rec-
8 ognized;

9 “(II) the limitation under sub-
10 section (a) shall not apply with re-
11 spect to any amount so transferred;

12 “(III) such amounts shall not re-
13 duce taxable income under subsection
14 (c)(1)(A); and

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

23 “(iii) In the case of any amounts dis-
24 tributed from a special temporary capital
25 construction fund pursuant to an election

1 under paragraph (1), subparagraphs (A)
2 and (B) of paragraph (2) shall not apply
3 to so much of such amounts as are attrib-
4 utable to earnings accrued after the date
5 of the establishment of such special tem-
6 porary capital construction fund.

7 “(iv) Any amount not distributed
8 from a special temporary capital construc-
9 tion fund before the due date of the tax re-
10 turn (including extension) for the last tax-
11 able year of the individual ending before
12 January 1, 2012, shall be treated as dis-
13 tributed to the taxpayer on the day before
14 such due date as if an election under para-
15 graph (1) were made by the taxpayer on
16 such day the date.

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

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

1 “(ii) preventing the abuse of the pur-
2 poses of this section.

3 “(4) TAX BENEFIT RULE.—Rules similar to the
4 rules under subsection (g)(6)(B) shall apply for pur-
5 poses of determining tax liability on any nonqualified
6 withdrawal under paragraph (2), (3)(A)(v), or
7 (3)(B)(iv).

8 “(5) APPLICABLE DATE.—For purposes of this
9 subsection, the term ‘applicable date’ means—

10 “(A) with respect to any capital construc-
11 tion fund which has a balance of less than
12 \$1,000,000 on the date that an election under
13 paragraph (1) was made, the date of such elec-
14 tion; and

15 “(B) with respect to any other capital con-
16 struction fund, the last day of the taxable year
17 which includes the date of the enactment of this
18 subsection.

19 “(6) ELECTION.—Any election under paragraph
20 (1)—

21 “(A) may only be made—

22 “(i) by a person who maintains a cap-
23 ital construction fund with respect to a
24 vessel operated in the fisheries of the

1 United States on the date of the enactment
2 of this subsection, or

3 “(ii) by a person who maintains a
4 capital construction fund which was estab-
5 lished pursuant to subparagraph (3)(A)(ii)
6 as a result of an election made by an enti-
7 ty in which such person was a shareholder,
8 partner, or member,

9 “(B) shall be made not later than the due
10 date of the tax return (including extensions) for
11 the person’s last taxable year ending on or be-
12 fore December 31, 2012, and

13 “(C) shall apply to all amounts in the cap-
14 ital construction fund with respect to which the
15 election is made.

16 “(7) ELECTION TO AVERAGE INCOME.—At the
17 election of an individual who has received a distribu-
18 tion described in paragraph (2), for purposes of sec-
19 tion 1301—

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

22 “(B) such distribution shall be treated as
23 income attributable to a fishing business for
24 such taxable year.”.

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

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