

Congress Authorizes Major Expansion of Vessel Tax Deferral Program

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The National Defense Authorization Act for Fiscal Year 2023 sent to President Biden for his signature on December 16, 2022, contains a major expansion of the Capital Construction Fund (CCF) vessel tax deferral program designed to help finance the construction of vessels in the United States.

The CCF program, jointly overseen by the U.S. Maritime Administration and the Internal Revenue Service, permits taxpayers to defer paying taxes on qualified earnings provided they are invested ultimately in the construction or reconstruction of a vessel in the United States. MARAD enters into Capital Construction Fund Agreements with persons who meet program conditions and who then can deposit earnings in an account which in turn is not taxed.

Once a vessel is constructed, the depreciable basis is reduced to the extent of tax-deferred earnings used to finance the vessel's construction. Likened to a "401(K) for shipowners," CCF is particularly useful for companies expanding or replacing their fleet of vessels.

Until the enactment of the NDAA '23, the program was not available to vessels engaged in the direct domestic trade. Only vessels engaged in the U.S. foreign trade or in the non-contiguous domestic trade currently qualify including vessels serving the offshore oil and gas industry. The NDAA '23 expands that qualification to include vessels in "domestic trade" which appears to include vessels such as inland tugs and barges, harbor tugs, and other vessels engaged in the contiguous U.S. domestic maritime trade.

The provision started out in early 2022 as an expansion to cover certain domestic ferries. The further expansion to cover the contiguous domestic trade occurred without fanfare or explanation as that proposal was modified for inclusion in the NDAA'23.

The provision itself does not contain an effective date which means that it is likely to apply going forward from the date President Biden signs the legislation. It is not clear how MARAD will account for the change in its regulations and in all of the pre-existing CCF Agreements which contain penalties for any CCF-constructed vessel operating in the contiguous domestic trade.

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Author

Charlie Papavizas

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Charlie Papavizas

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